Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

International Tax 2026

Definitive global law guides offering comparative analysis from top-ranked lawyers

Contributing Editor
Caroline Silberztein
Baker McKenzie



Chambers

Global Practice Guides

International Tax

Contributing Editor

Caroline Silberztein

Baker McKenzie

2026

Chambers Global Practice Guides

For more than 20 years, Chambers Global Guides have ranked lawyers and law firms across the world. Chambers now offer clients a new series of Global Practice Guides, which contain practical guidance on doing legal business in key jurisdictions. We use our knowledge of the world's best lawyers to select leading law firms in each jurisdiction to write the 'Law & Practice' sections. In addition, the 'Trends & Developments' sections analyse trends and developments in local legal markets.

Disclaimer: The information in this guide is provided for general reference only, not as specific legal advice. Views expressed by the authors are not necessarily the views of the law firms in which they practise. For specific legal advice, a lawyer should be consulted.

Content Management Director Claire Oxborrow
Content Manager Jonathan Mendelowitz
Senior Content Reviewers Sally McGonigal, Ethne Withers, Deborah Sinclair, Stephen Dinkeldein, Vivienne Button and Sean Marshall
Content Reviewers Lawrence Garrett, Marianne Page, Heather Palomino, Alison Moore, Adrian Ciechacki and Michael Irvine
Content Coordination Manager Nancy Tsang
Senior Content Coordinators Carla Cagnina and Delicia Tasinda
Content Coordinator Joanna Chivers
Head of Production Jasper John
Production Coordinator Genevieve Sibayan

Published by
Chambers and Partners
165 Fleet Street
London
EC4A 2AE
Tel +44 20 7606 8844
Fax +44 20 7831 5662
Web www.chambers.com

Copyright © 2026
Chambers and Partners

CONTENTS

INTRODUCTION
Contributed by Caroline Silberztein, Baker McKenzie p.5

ARGENTINA
Law and Practice p.8
Contributed by Rinci & Asociados
Trends and Developments p.20
Contributed by Rinci & Asociados

AUSTRIA
Law and Practice p.28
Contributed by Schindler Attorneys

BELGIUM
Law and Practice p.45
Contributed by Tiberghien

BRAZIL
Law and Practice p.57
Contributed by William Freire - Advogados Associados

BULGARIA
Law and Practice p.73
Contributed by Banchev and Grishina Law Firm
Trends and Developments p.83
Contributed by Banchev and Grishina Law Firm

CHILE
Law and Practice p.89
Contributed by Cortés Del Río Tax & Legal

CHINA
Law and Practice p.105
Contributed by DaHui Lawyers
Trends and Developments p.124
Contributed by Shihui Partners

FINLAND
Law and Practice p.130
Contributed by Svalner Atlas Finland
Trends and Developments p.141
Contributed by Svalner Atlas Finland

FRANCE
Law and Practice p.146
Contributed by Bruzzo Dubucq

GERMANY
Law and Practice p.159
Contributed by MTR Legal Rechtsanwälte

GREECE
Law and Practice p.168
Contributed by Dryllerakis Law Firm

IRELAND
Law and Practice p.187
Contributed by A&L Goodbody
Trends and Developments p.205
Contributed by A&L Goodbody

ITALY
Law and Practice p.209
Contributed by Foglia & Partners
Trends and Developments p.229
Contributed by Foglia & Partners

JAPAN
Law and Practice p.236
Contributed by Anderson Mōri & Tomotsune
Trends and Developments p.247
Contributed by Anderson Mōri & Tomotsune

KAZAKHSTAN
Law and Practice p.252
Contributed by GRATA International

LUXEMBOURG
Law and Practice p.260
Contributed by Tiberghien
Trends and Developments p.275
Contributed by Baker McKenzie Luxembourg

MAURITIUS
Law and Practice p.281
Contributed by CMS Prism in association with CMS

MEXICO
Law and Practice p.293
Contributed by Escalante & Asociados
Trends and Developments p.310
Contributed by Escalante & Asociados

NORWAY
Law and Practice p.316
Contributed by Aider Legal
Trends and Developments p.327
Contributed by Aider Legal

CONTENTS

PANAMA
Law and Practice p.333
Contributed by Galindo, Arias & López
Trends and Developments p.344
Contributed by Galindo, Arias & López

PORTUGAL
Law and Practice p.349
Contributed by CCA Law Firm
Trends and Developments p.365
Contributed by CCA Law Firm

PUERTO RICO
Law and Practice p.371
Contributed by Maceira Zayas
Trends and Developments p.379
Contributed by Maceira Zayas

SINGAPORE
Law and Practice p.385
Contributed by DBS Private Bank
Trends and Developments p.401
Contributed by DBS Private Bank

SOUTH KOREA
Law and Practice p.408
Contributed by Shin & Kim
Trends and Developments p.422
Contributed by Yulchon LLC

SPAIN
Law and Practice p.426
Contributed by act legal

SWEDEN
Law and Practice p.443
Contributed by XR Legal
Trends and Developments p.455
Contributed by XR Legal

SWITZERLAND
Law and Practice p.459
Contributed by Aegis
Trends and Developments p.476
Contributed by Tax Partner AG

UK
Law and Practice p.483
Contributed by King & Spalding LLP
Trends and Developments p.493
Contributed by King & Spalding LLP

USA
Law and Practice p.499
Contributed by Weil, Gotshal & Manges LLP
Trends and Developments p.512
Contributed by Weil, Gotshal & Manges LLP

USA – NEW YORK
Trends and Developments p.517
Contributed by Falcon Rappaport & Berkman LLP

INTRODUCTION

Contributed by: Caroline Silberztein, **Baker McKenzie**

Baker McKenzie is a premier global law firm recognised for its vast international footprint and deep-rooted sector expertise. With more than 70 offices across over 40 jurisdictions, the firm offers clients seamless access to legal services in virtually every major market. This extensive reach enables it to support cross-border transactions, regulatory matters, and complex disputes with agility and precision.

Contributing Editor



Caroline Silberztein heads Baker McKenzie's international tax and transfer pricing practice in France. She assists multinational clients in risk assessment and management, the design and implementation of transfer pricing policies adapted to their business models, the drafting of documentation, as well as tax audits, litigation, mutual agreement procedures / arbitration and advance pricing agreements, both locally and globally.

Baker McKenzie

1 rue Paul Baudry
75008 Paris
France

Tel: + 33 1 4417 5300
Fax: + 33 1 4417 4575

INTRODUCTION

Contributed by: Caroline Silberztein, **Baker McKenzie**

International Tax 2026 – Introduction

The international tax environment in 2026 is characterised by a sustained tension between convergence and fragmentation. On the one hand, unprecedented multilateral co-ordination efforts continue to reshape domestic tax systems and corporate tax governance. On the other hand, divergent policy choices, geopolitical considerations and differing stages of legislative implementation contribute to an increasingly complex and uneven international tax landscape. These dynamics directly affect the way multinational enterprises structure their operations, manage risk and approach cross–border investment.

The first area of convergence lies in the progressive implementation of the OECD/G20 Inclusive Framework reforms. Over recent years, the global minimum tax under Pillar Two moved from policy design to operational reality in a growing number of jurisdictions. Many countries, including a significant number of EU member states and other major economies, have enacted domestic legislation and issued administrative guidance, while others are still refining their implementation frameworks. As a result, multinational groups are increasingly required to navigate detailed domestic rules governing effective tax rates, compliance obligations and interaction with existing corporate income tax regimes. This development has practical implications well beyond tax rates, extending to internal governance, systems, data management and reporting capabilities.

By contrast, Pillar One continues to raise complex political and technical questions. While consensus emerged around Amount B as a mechanism to simplify the remuneration of baseline marketing and distribution activities, the future of Amount A remains uncertain. Ongoing discussions reflect competing objectives relating to the reallocation of taxing rights, the treatment of highly digitalised business models and the co-ordination (or withdrawal) of unilateral digital services taxes. As a result, multinational businesses must closely monitor developments across jurisdictions, where domestic approaches to digital taxation and treaty policy may continue to diverge.

Beyond these global reforms, traditional international tax concepts are being tested by structural changes to the way business is conducted. Increased digitalisation and the normalisation of remote and cross-border working arrangements challenge established notions of territoriality, tax residence and permanent establishment. Jurisdictions have responded unevenly to these developments, with some issuing targeted guidance or adapting domestic rules, while others continue to rely on existing frameworks.

At the same time, tax authorities are making intensified use of expanded reporting and exchange-of-information mechanisms. Automatic exchanges, enhanced disclosure regimes and the use of data analytics have significantly increased the ability of administrations to identify, assess and challenge perceived tax risks. Scrutiny is particularly pronounced in areas such as transfer pricing, permanent establishment exposure, withholding taxes and the taxation of mobile capital and labour. This enforcement-focused environment underscores the importance of robust documentation, proactive compliance strategies and a clear understanding of domestic anti-avoidance and anti-evasion frameworks, including penalty and sanction regimes.

Against this backdrop, dispute prevention and resolution mechanisms have assumed heightened importance. Advance pricing agreements, co-operative compliance programmes and tax rulings are increasingly used in some jurisdictions to secure upfront tax certainty, while mutual agreement procedures and arbitration play a central role in resolving cross-border disputes where conflicts arise. However, the availability, efficiency and effectiveness of these tools continue to vary significantly across countries, depending on local procedural rules and administrative practice.

This Guide seeks to capture these developments through a structured, jurisdiction-by-jurisdiction analysis. Each chapter follows a common framework, addressing the sources and hierarchy of international tax law, the principles of territoriality, residence and permanent establishment, the taxation of cross-border income, the implementation of global tax reforms, anti-avoidance measures, penalties and sanctions relating to international tax matters, administrative co-operation and dispute prevention/resolution mechanisms. By combining this consistent structure with detailed local insight, the Guide provides practition-

INTRODUCTION

Contributed by: Caroline Silberztein, **Baker McKenzie**

ers, in-house tax teams and policy stakeholders with a comparative overview of how international tax rules are evolving in practice across jurisdictions, at a time of significant transformation of the global tax order.

ARGENTINA



Law and Practice

Contributed by:
Daniel Rinci, Tomas Cabanelas, Fernando García and Marisa Majul
Rinci & Asociados

Contents

1. Sources and Principles p.10
1.1 Domestic Sources of International Tax Law p.10
1.2 Hierarchy of Sources p.10
1.3 OECD Model/United Nations Influence on Treaty Practice p.11
1.4 Multilateral Instrument p.11

2. Territoriality, Residence and Permanent Establishment p.11
2.1 General Principle of Territorial Taxation p.11
2.2 Tax Residence of Individuals p.11
2.3 Taxation of Resident Individuals p.12
2.4 Taxation of Non-Resident Individuals p.12
2.5 Tax Residence of Legal Entities p.12
2.6 Definition of Permanent Establishment p.12

3. Taxation of Cross-Border Income p.13
3.1 Income From Immovable Property p.13
3.2 Business Profits p.13
3.3 Passive Income p.13
3.4 Capital Gains p.14
3.5 Employment Income p.14
3.6 Other Income p.14

4. OECD/G20 Global Tax Reform p.15
4.1 Pillar One – Amount B p.15
4.2 Pillar One – Amount A p.15
4.3 Pillar Two p.15
4.4 Specific Features or Deviations of Pillar Two p.15
4.5 Digital Services Tax p.15

5. Anti-Avoidance and Anti-Evasion Measures p.15
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.15
5.2 Anti-Avoidance Mechanisms p.15
5.3 Blacklists and Non-Cooperative Jurisdictions p.16
5.4 Reporting Obligations and Disclosure Regimes p.16
5.5 Role of Tax Authorities and Enforcement Measures p.16

6. Penalties and Sanctions p.17
6.1 Tax Penalties p.17
6.2 Criminal Penalties p.17
6.3 Interaction Between Tax and Criminal Procedures p.17

7. Administrative Co-Operation p.17
7.1 Legal Framework for Administrative Co-Operation p.17
7.2 Exchange of Information Clauses in Tax Agreements p.18
7.3 Other Forms of International Tax Collaboration p.18

8. Mutual Agreement Procedures and Arbitration p.18
8.1 Availability and Legal Basis p.18
8.2 Application Deadlines p.18
8.3 Mandatory Binding Arbitration p.18

9. Dispute Prevention p.19
9.1 Advance Pricing Agreements p.19
9.2 Other Mechanisms p.19

Rinci & Asociados is a team of professionals, accountants and lawyers, with over 20 years of experience in accounting services, legal consulting and tax litigation. The firm has a dynamic tax department in Argentina that regularly advises domestic and international clients in the agro-industrial, transportation and financial sectors, as well as private clients. The firm not only advises and litigates from a legal perspective, but also takes a holistic approach towards taxes. For this, it relies on a team of lawyers, accountants and tax-related collaborators who work together to provide an all-encompassing taxation and tax compliance service, which requires a deep understanding not just of applicable regulations and case law, but also of accounting, the tax authorities' modus operandi and software applications, tax criminal law, etc. The legal team has experience in double taxation, tax planning, and payroll taxes, as well as tax claims before federal and provincial authorities.

Authors



Daniel Rinci is a certified public accountant and lawyer, with a master's in tax law. His extensive experience in tax matters, and his dual professional vision as an accountant and lawyer, have allowed him to work on various types of litigation, including before the National Supreme Court of Justice. In 2001 he founded Rinci & Asociados to provide advice to various companies with the conviction that teamwork, proactivity and clear and honest communication with the client were the path to successful service provision.



Tomas Cabanelas graduated from the University of Buenos Aires with a focus on tax law. He then completed postgraduate studies in economic criminal law (UBA) and a master's in criminal law (Universidad Austral), with specialisations in wealth management, organisation and protection of assets, family planning, stock investments, finance and accounting. In addition to his role at Rinci & Asociados, he is an assistant teacher in the master's in tax law degree course at the Universidad Católica Argentina and an assistant teacher in the introduction to tax law course at the Argentine Association of Fiscal Studies (AAEF).



Fernando García is a certified public accountant and has been a partner at Rinci & Asociados since 2012, single-handedly leading the accounting department. After several years of experience, he has developed a high level of technical knowledge, the product of consistent training and updating. He provides a unique perspective to agricultural companies.



Marisa Majul is a certified public accountant who has a degree in international commerce, and a master's in finance and tax law. At Rinci & Asociados, she generates key information for decision-making through the design and development of indicators and dashboards. Marisa also has extensive experience in internal processes control and achievement of objectives.

Rinci & Asociados

Estudio Rinci & Asociados
Av. Santa Fe 830 - 2° Floor
Buenos Aires
Argentina

Tel: +54 011 5031-8980
Email: Info@estudiorinci.com
Web: www.estudiorinci.com



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Primary Legislation

The main source of international tax law in Argentina is the Income Tax Law and its implementing decree. This statute governs the taxation of Argentine-source and foreign-source income for both residents and non-residents. The Personal Assets Tax Law and the Value Added Tax Law also contain provisions with cross-border implications.

Regulatory and Administrative Sources

The Federal Tax Authority (*Agencia de Recaudación y Control Aduanero* or ARCA) issues general resolutions and concrete-case interpretative rulings that form a critical layer of administrative guidance. While interpretative rulings are not formally binding on third parties, they carry substantial weight in practice and are routinely followed by taxpayers and advisers.

Case Law and Constitutional Principles

Argentine courts, including the Supreme Court of Justice, have developed a body of constitutional tax jurisprudence centred on the principles of legality (no tax without law), equality, non-confiscation and ability to pay. The economic reality doctrine (or substance over form) codified in the Tax Procedure Law allows the authorities to look through form to substance in interpreting transactions.

Treaty Network

Argentina has concluded 23 comprehensive double tax treaties (DTTs), currently in force, with countries including Germany, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Italy, the Netherlands, Norway, Russia, Spain, Sweden, Switzerland, the UAE, and the United Kingdom. Argentina has also entered into tax information exchange agreements (TIEAs) with several jurisdictions. The treaty network is relatively modest in scope compared to those of OECD member states, but continues to expand gradually.

1.2 Hierarchy of Sources

In Argentina's constitutional framework, international treaties – once ratified and incorporated – have supra-legal status; that is, they rank above ordinary legislation but below the National Constitution. This hierarchy, established in the Constitution, means that where a tax treaty conflicts with domestic tax law, the treaty generally prevails.

Domestic tax law's hierarchy starts with congressional laws, which are then regulated by presidential decrees. ARCA's regulations are legally subordinate to both treaties and statutes. However, its officials will uphold the provisions contained in the organism's resolutions without questioning potential conflicts with superior legislation. Thus, given the practical importance of regulatory resolutions in day-to-day compliance, taxpayers must monitor these closely alongside statutory law.

1.3 OECD Model/United Nations Influence on Treaty Practice

Argentina is not an OECD member, though it participates in the OECD's Base Erosion and Profit Shifting (BEPS) Inclusive Framework. Argentina's treaty practice draws on both the OECD Model Tax Convention and the UN Model Double Taxation Convention, with a general preference for the latter given its greater source-state taxation orientation – consistent with Argentina's position as a capital-importing country.

Notable deviations from the OECD Model include broader definitions of royalties and expanded source-state taxing rights over technical services fees (which Argentina historically treats as royalties or similar remuneration subject to withholding). Argentina has generally resisted the OECD's narrower interpretation of the permanent establishment (PE) concept and has maintained source-based taxing rights in line with UN Model preferences.

Argentina's domestic law also imposes withholding taxes on certain payments to non-residents that may not align with treaty-reduced rates, unless the taxpayer actively invokes the applicable convention and complies with its local regulations.

1.4 Multilateral Instrument

Argentina signed the OECD Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (the "Multilateral Instrument" or MLI). It has been ratified and it came into force on 1 January 2026.

Argentina has opted into the MLI's provisions on hybrid mismatch arrangements, treaty abuse (adopting the Principal Purpose Test as its minimum standard for satisfying the BEPS Action 6 requirement), and dispute resolution. It has made reservations on mandatory binding arbitration under Article 18. The MLI is modifying a number of Argentina's covered tax agreements, though the precise treaties affected depend on the matching positions of counterparty states. Taxpayers and practitioners should review the MLI synthesised texts for each relevant treaty to determine the applicable rules.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Argentina operates a worldwide taxation system for tax residents – both individuals and legal entities – meaning that Argentine tax residents are subject to income tax on income derived from all sources, whether Argentine or foreign.

Non-residents, by contrast, are taxed only on Argentine-source income. The concept of Argentine-source income is defined broadly in the Income Tax Law to include income from assets located, placed, or used economically in Argentina; income from activities carried out in Argentina; and income from acts performed in Argentina, regardless of the nationality or residence of the parties, or the location where contracts were concluded.

Certain special regimes apply to income from financial instruments, international transportation, and news agencies, which have their own source rules. There are no special territorial regimes for particular geographic areas within Argentina that would materially alter these principles, though certain provinces and the City of Buenos Aires impose their own provincial-level taxes – turnover tax – with their own territorial rules.

2.2 Tax Residence of Individuals

Under the Income Tax Law, individuals are considered Argentine tax residents if they meet any of the following criteria:

- Argentine nationality – Argentine nationals are generally tax residents unless they have acquired foreign residence status through the effective change of domicile abroad under the conditions specified in the law.
- Foreign nationals with permanent residence – foreign nationals who have obtained permanent residence status in Argentina under immigration law are considered tax residents from the date they obtain such status.
- Presence test – foreign nationals who remain in Argentina for 12 months during any consecutive 12-month period are also treated as tax residents,

with certain exceptions for temporary assignments and diplomatic personnel.

Once an individual qualifies as a tax resident, that status is maintained until residence is formally lost. Loss of residence occurs when the individual acquires permanent residence in a foreign country or is continuously absent from Argentina for more than 12 months, subject to specific procedural requirements including notification to tax authorities.

2.3 Taxation of Resident Individuals

Argentine tax residents are subject to income tax on their worldwide income at progressive rates. The Income Tax Law schedules income into four categories:

- income from capital (rentals, interests);
- income from going concerns (business income);
- income from work in a dependency relationship (employment); and
- income from independent personal services (self-employment and professional fees).

Progressive income tax rates for individuals currently range from 5% to 35%, applied on net taxable income after allowable deductions and personal allowances. Resident individuals must also include foreign-source income in their annual income tax return and may claim a foreign tax credit for taxes paid abroad on that income, subject to per-country and overall limitations.

Special schedular rates apply to certain categories of income. Financial income – including interest on bank deposits, dividends from Argentine companies, and capital gains on financial instruments – is taxed at a flat rate of 5% or 15% depending on the currency denomination.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals are subject to Argentine income tax exclusively on Argentine-source income. The mechanism for taxing non-residents is generally through withholding at source, administered by the Argentine payer who acts as the withholding agent.

The Income Tax Law establishes presumptive net income percentages for various categories of payment made to non-residents, to which the maximum individual rate of 35% is then applied. The effective withholding rates thus vary by income type. For example:

- Royalties and technical fees – typically subject to withholding tax on a presumed net income base, yielding effective rates of approximately 12.25% to 21% depending on the type of service.
- Interest payments – subject to withholding tax at effective rates ranging from 15.05% to 35%, depending on the nature of the lender and the loan.
- Dividends – distributed dividends are subject to a 7% withholding tax.
- Services rendered abroad but economically used in Argentina – subject to withholding tax under the technical services rules.

Treaty protection may reduce or eliminate withholding tax on specific income categories where Argentina has concluded a relevant double tax agreement.

2.5 Tax Residence of Legal Entities

Legal entities – including local corporations and branches of foreign entities – are considered Argentine tax residents if they are incorporated or organised under Argentine law. Foreign entities incorporated abroad are not considered Argentine residents, regardless of where their management and control are exercised, unless they have a branch or permanent establishment in Argentina, in which case, the branch/PE is taxed on the Argentine-source income attributable to it.

Argentine-resident companies are subject to corporate income tax on worldwide income. The corporate tax rate is currently 35% for taxable income exceeding certain thresholds, with a reduced rate of 25% for lower income brackets.

2.6 Definition of Permanent Establishment

Domestic Definition

The domestic definition of PE is set out in the Income Tax Law and the implementing regulations. A PE is generally defined as a fixed place of business through which a non-resident entity carries out all or part of its activities in Argentina. The definition encompasses branches, agencies, offices, factories, workshops and

installations, as well as construction or assembly projects lasting more than six months.

The domestic law also provides for a dependent agent PE, where a person acting on behalf of a foreign enterprise habitually concludes contracts or plays the principal role in the conclusion of contracts in Argentina without material modification by the enterprise.

Deviations From Treaty Definitions

Argentina's domestic PE definition is broadly consistent with the OECD Model in structure, though some of Argentina's older treaties retain features that are more closely aligned with the UN Model, including the force-of-attraction principle – under which, profits attributable to a PE include not only those directly generated by the PE's activities but also income from goods sold or activities of the same or similar kind to those carried out through the PE. This principle was abandoned by the OECD Model but is retained in some bilateral treaties.

Argentina's treaties generally do not include the anti-fragmentation rules introduced in the OECD's 2017 Model update (following BEPS Action 7), except where treaties have been modified through the MLI. The domestic rules similarly pre-date these developments, meaning that sophisticated fragmentation of activities may still present opportunities in certain treaty contexts, though the substance requirements under the general anti-avoidance framework limit this in practice.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Residents

Argentine resident individuals and companies are taxed on income derived from immovable property located in Argentina as part of their worldwide income. Rental income of individuals is subject to the progressive rates described above, except when derived from residential property, which was recently exempted by a tax reform passed in March 2026. For companies, rental income is included in ordinary taxable income subject to corporate tax. Capital gains arising from the sale of Argentine real estate by individuals are now exempt under the same reform.

Non-Residents

Non-residents receiving rental income from Argentine real estate are subject to withholding tax. The presumed net income percentage applied under the domestic rules is 60% of gross rent, to which the 35% rate is applied, resulting in an effective withholding rate of 21%. Capital gains realised by non-residents on the sale of Argentine immovable property are subject to a 15% tax on the net gain. The exemption on capital gains and rental income arising from residential real estate applies to non-residents as well.

3.2 Business Profits

Argentine-resident entities are subject to corporate income tax on worldwide business profits at the applicable corporate rates (25% or 35% depending on the income bracket). Expenses necessary to obtain, maintain and preserve taxable income are generally deductible, subject to specific limitations (eg, on interest deductibility, on payments to related parties in low-tax jurisdictions, and on the deductibility of royalties).

Non-resident entities carrying on business through a PE in Argentina are taxed only on profits attributable to the PE. The attribution of profits to PEs follows the functionally separate entity approach, though Argentina's rules in this area are less developed than those of many OECD members and administrative guidance plays an important role. The force-of-attraction principle mentioned in **2.6 Definition of Permanent Establishment** applies under certain older treaties.

Argentina does not currently have a comprehensive participation exemption for dividends received from foreign subsidiaries by Argentine parent companies, though the foreign tax credit mechanism partially mitigates double taxation of foreign-source income.

3.3 Passive Income

Dividends

Dividends paid by Argentine companies to non-resident shareholders are subject to a 7% withholding tax on distributions.

Interest

Domestic withholding tax on interest paid to non-residents varies significantly depending on the nature of the recipient and the loan. Interest paid to qualifying foreign financial entities is taxed at an effective rate of 15.05%, while interest paid to other non-resident lenders is taxed at a rate of 35%.

Royalties

Royalties paid to non-residents are subject to withholding tax at effective rates that range from approximately 12.25% to 28%, depending on the type of intellectual property and the contractual arrangement. Domestic rules treat a broad range of technical assistance, technology transfer, and know-how payments as royalties. Treaty provisions may reduce these rates, and Argentina's treaties generally define royalties broadly, consistent with the UN Model.

3.4 Capital Gains

Resident individuals are subject to a flat 15% rate on gains from the disposal of shares, bonds and other securities denominated in foreign currency or in local currency with an adjustment clause, and a 5% rate on gains from instruments denominated in Argentine pesos without an adjustment clause. Corporate taxpayers include capital gains in ordinary taxable income, subject to the applicable corporate rates. Capital gains on the sale of listed shares is exempt.

Non-residents realising capital gains on Argentine-source assets are subject to withholding tax under the same presumptive income framework applicable to other passive income. Gains on Argentine real estate, shares of Argentine companies, and certain financial instruments are all within scope. Many of Argentina's treaties contain provisions that preserve source-state taxation rights over capital gains on shares, the value of which derives principally from immovable property, consistent with OECD and UN Model approaches.

3.5 Employment Income

General Rules

Employment income received by Argentine tax residents is taxable at different rates according to bracket. Employers are required to withhold income tax from salary payments on a monthly basis. Resident employees are taxed on worldwide employment income, with a foreign tax credit available for taxes withheld abroad.

Short-Term Assignments and Cross-Border Employment

For individuals who are not Argentine tax residents but perform employment activities in Argentina, Argentine-source employment income is subject to withholding tax. The domestic rules follow a source approach based on the place where the work is physically performed, meaning that compensation for services physically rendered in Argentina is treated as Argentine-source, regardless of where the contract is concluded or payment is made.

Argentina's tax treaties generally follow the OECD Model Article 15 approach, under which remuneration may be taxed in the state where employment is exercised.

Remote Working

Argentina has not enacted specific legislation addressing the international tax treatment of remote work arrangements. In practice, the existing source rules apply: services performed remotely from Argentina by an Argentine resident for a foreign employer are treated as foreign-source employment income (since the work is performed in Argentina but for a foreign entity – the characterisation depends on the relevant treaty). Conversely, services performed remotely from abroad by a non-resident for an Argentine employer are generally not considered Argentine-source under the domestic rules. This area lacks specific regulatory guidance and continues to evolve in practice.

3.6 Other Income

A noteworthy feature of Argentine international tax law is the treatment of fees for technical services paid to non-residents. Unlike many OECD Model-based systems in which technical service fees are treated as business profits (Article 7) rather than royalties (Article 12), Argentina's domestic law characterises technical services payments as subject to withholding tax as though they were royalties. This broad treatment of technical services has been a source of treaty conflict in a number of cases.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As a member of the OECD/G20 Inclusive Framework, Argentina participated in the negotiations that produced the Amount B framework for simplifying the application of the arm's length principle to baseline marketing and distribution activities. At the time of writing, Argentina has not yet formally incorporated Amount B into domestic law or regulations.

4.2 Pillar One – Amount A

Argentina has constructively engaged in the Pillar One Amount A negotiations through its participation in the Inclusive Framework. As a significant developing economy and capital-importing country, Argentina's interest in Amount A is primarily to ensure that it receives a fair allocation of taxing rights over the profits of large multinational digital and consumer-facing enterprises that generate significant revenue from Argentine users and consumers without having a physical presence in Argentina.

4.3 Pillar Two

Argentina has not yet implemented the OECD's Global Anti-Base Erosion (GloBE) rules – the Income Inclusion Rule, Undertaxed Profits Rule, and Qualified Domestic Minimum Top-up Tax under Pillar Two. At the time of writing, there is no enacted legislation or draft bill before congress introducing Pillar Two rules into Argentine domestic law.

4.4 Specific Features or Deviations of Pillar Two

As Argentina has not implemented Pillar Two, there are no domestic deviations to report at this stage.

4.5 Digital Services Tax

Argentina does not have a standalone national digital services tax. However, the Argentine VAT system was extended to cover digital services supplied by non-resident providers to Argentine consumers through "reverse charge" and "payment intermediary" mechanisms. Under these rules, non-resident providers of digital services (including streaming, software, online advertising, and platform-based services) are required to register and collect VAT at the standard 21% rate on services supplied to Argentine final consumers, with payment facilitated through Argentine credit and debit card processors where direct registration is not effected.

Several Argentine provinces have also applied provincial turnover tax to digital services rendered by foreign providers. These provincial-level taxes add a layer of complexity for non-resident digital businesses operating in Argentina.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax Evasion and Fraud

Argentina's Criminal Tax Regime establishes minimum thresholds to consider tax fraud a criminal offence. Simple tax fraud is a criminal offence when the amount of evaded tax exceeds ARS100 million (roughly USD70,000) per tax and per fiscal period, punishable by imprisonment from two to six years. Aggravated tax evasion – which includes the use of false invoices, interposed persons, tax havens or much larger amounts evaded – carries penalties of three-and-a-half to nine years' imprisonment.

Tax Avoidance and the Economic Reality Doctrine

The general anti-avoidance rule in Argentina is primarily the economic reality doctrine. This doctrine permits the tax authority to recharacterise transactions in accordance with their true economic nature, disregarding legal forms that do not reflect economic substance. The doctrine has been applied extensively in cross-border contexts to challenge structures involving treaty shopping, artificial PE fragmentation, and the use of offshore holding companies without business substance.

5.2 Anti-Avoidance Mechanisms

Transfer Pricing Rules

Argentina introduced comprehensive transfer pricing legislation in 1998, applying the arm's length principle to transactions between related parties and to transactions with entities in low-tax jurisdictions (regardless of whether the parties are formally related). The rules

generally follow OECD Guidelines, with five transfer pricing methods available: comparable uncontrolled price, resale price, cost plus, profit split, and transactional net margin method. The sixth method – a specific rule for commodity transactions using publicly quoted prices on a reference date – is a notable feature of Argentine law with no direct OECD equivalent and has been a significant source of controversy in the agribusiness sector.

Controlled Foreign Corporation (CFC) Rules

Argentina enacted specific and complicated CFC rules that entered into effect in 2019. Argentine residents holding foreign interests must, in some cases, include their proportionate share of the foreign entity's income in their Argentine taxable income on a current accrual basis, regardless of whether the income has been distributed.

Some of the applicable parameters that may trigger this obligation are, among others: holding at least 50% participation in a foreign entity either directly or with relatives; effectively controlling the foreign entity; the foreign entity being subject to low taxation; or the foreign entity earning more than 50% of its income from passive sources.

5.3 Blacklists and Non-Cooperative Jurisdictions

Argentina maintains a list of non-cooperative and low-tax jurisdictions for tax purposes. A jurisdiction is classified as non-cooperative if it has not entered into effective information exchange arrangements with Argentina. A jurisdiction is classified as low tax if its applicable corporate tax rate is less than 60% of the lowest Argentine corporate rate. Currently, this threshold applies where a jurisdiction's corporate tax rate is lower than 15%.

Transactions with entities located in non-cooperative or low-tax jurisdictions attract the following consequences:

- interest payments are subject to higher withholding rates;
- payments to service providers are generally non-deductible unless the taxpayer can demonstrate the genuine economic nature of the service and its market price;
- the CFC rules apply more broadly; and
- certain anti-deferral rules come into effect for income channelled through such jurisdictions.

5.4 Reporting Obligations and Disclosure Regimes

Financial Account Reporting (CRS/FATCA)

Argentina has implemented the OECD's Common Reporting Standard (CRS) for automatic exchange of financial account information and is an active participant in the global CRS exchange network. Argentina also has an intergovernmental agreement (IGA) with the United States for FATCA compliance (under the Foreign Account Tax Compliance Act), according to which Argentine financial institutions report information on US account holders to local tax authorities for onward transmission to the IRS. The US also provides information to Argentina, although with a more limited scope.

Treaty Network

Several treaties provide for request-based tax information requests, which synergises with CRS/FATCA automatic reporting, often used by tax authorities to broaden the scope of information received automatically for tax assessments and criminal prosecution.

5.5 Role of Tax Authorities and Enforcement Measures

Federal tax authorities hold wide power to investigate tax fraud, such as:

- Access to books and records – Inspectors may require the production of accounting records, contracts, banking documents and any other documentation relevant to the determination of tax liability. Taxpayers are required to maintain records for a period of ten years.
- Tax audits – Both desk audits and field audits are routinely conducted. Large taxpayers are subject to permanent oversight by a dedicated large taxpayer division.
- Unannounced visits – In certain circumstances, inspectors may conduct unannounced visits to business premises to verify compliance with invoicing and registration obligations.

- Fiscal raids – For criminal tax cases, search and seizure operations may be conducted with the intervention of the Public Prosecutor's Office and, where applicable, the federal police.
- Information requests – Information may be requested from third parties, including banks and financial institutions, under the bank secrecy lifting (*levantamiento del secreto bancario*) mechanism available in tax investigation proceedings.
- International co-operation – Federal tax authorities may request information from foreign tax authorities through the exchange of information mechanisms in Argentina's tax treaties and TIEAs, as well as through the OECD Multilateral Convention framework.

6. Penalties and Sanctions

6.1 Tax Penalties

The main administrative penalties applicable to cross-border transactions include:

- omission penalty – a fine of 100% of the unpaid tax for failure to pay taxes on time, rising to 200% when the omission relates to cross-border transactions or to transactions with non-cooperative or low-tax jurisdictions;
- fraud penalty – a fine of between two and six times the amount of the unpaid tax for deliberate fraud, including the use of false documentation or fraudulent schemes in cross-border contexts;
- formal infractions – fines for failure to comply with formal obligations (such as filing returns, maintaining documentation, and responding to information requests) where previously negligible, have been substantially raised; and
- transfer pricing penalties – specific penalties apply for failure to file transfer pricing documentation or for filing documentation that is incomplete or incorrect.

The courts ultimately rule on the validity of the penalties imposed by tax authorities and, once ruled, a different court enforces them.

6.2 Criminal Penalties

Criminal liability can extend to directors, officers, and managers of legal entities who participated in or authorised the evasion. Legal entities themselves can be subject to administrative sanctions, including fines, suspension of tax registrations, and the loss of tax benefits.

6.3 Interaction Between Tax and Criminal Procedures

The Tax Penal Regime requires the tax assessment to be issued by tax authorities before criminal charges can be filed; the tax authority files a criminal case once the relevant thresholds and indicators are met and the administrative audit discloses potential criminal conduct.

However, the tax assessment may be appealed to the courts and this may run concurrently with criminal procedures. The exception is monetary fines imposed by the tax authorities, which are deferred until the criminal case is settled.

Co-ordination between tax authorities and the judiciary is maintained through inter-institutional agreements and joint working protocols. The courts may also order precautionary measures – such as asset freezes – at the request of the prosecution in significant tax fraud cases.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Argentina's international administrative co-operation in tax matters rests on several legal instruments:

- OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) – Argentina signed and ratified the MAC. This convention provides the broadest legal basis for information exchange, including automatic, spontaneous, and on-request exchange, as well as the possibility of joint audits.
- Bilateral tax treaties – Argentina's double tax treaties all include provisions on the exchange of

information, broadly modelled on Article 26 of the OECD or UN Model.
- Tax information exchange agreements – Argentina has entered into TIEAs with a number of jurisdictions, particularly offshore financial centres, where no comprehensive DTT exists.
- CRS competent authority agreements – Argentina has entered into multilateral automatic exchange of financial account information under the CRS framework.

7.2 Exchange of Information Clauses in Tax Agreements

Argentina participates in all three standard modalities of information exchange:

- On-request exchange – Argentina may request specific information from treaty partners relating to identified taxpayers or transactions, and must respond to incoming requests from foreign competent authorities within the standard timeframes.
- Automatic exchange – Argentina exchanges financial account information automatically under the CRS framework with over 100 jurisdictions annually. FATCA exchange with the United States also occurs on an automatic basis under the IGA.
- Spontaneous exchange – Argentina may spontaneously transmit information to foreign tax authorities when it becomes aware of information likely to be of interest to those authorities, consistent with the MAC and applicable treaty obligations.

Argentina has largely met the international standard for effective exchange of information and has received satisfactory ratings in OECD Global Forum peer reviews.

7.3 Other Forms of International Tax Collaboration

Argentina actively participates in the OECD/G20 Inclusive Framework on BEPS, attending meetings and contributing to the development of international standards. This participation provides a channel for technical collaboration with other tax authorities beyond formal legal instruments.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Argentina provides for the use of mutual agreement procedures (MAPs) under the MAP articles of its bilateral tax treaties, which generally follow Article 25 of the OECD or UN Model.

Argentina has also implemented the minimum standard on MAP under BEPS Action 14, committing to resolve MAP cases in a timely and effective manner. The country has published its MAP profile on the OECD website, which sets out its policies and procedures for initiating, processing, and resolving MAP cases. Argentina's MAP programme is relatively nascent compared to those of OECD members, and the volume of MAP cases handled by the competent authority remains modest.

8.2 Application Deadlines

Under most of Argentina's treaties, a MAP request must be submitted within three years of the first notification of the action giving rise to taxation not in accordance with the treaty – consistent with the OECD Model Article 25 (1) standard. Some older treaties contain shorter limitation periods. Under Argentina's domestic MAP guidance, requests must be submitted to the competent authority in writing with sufficient information to identify the taxpayer, the relevant treaty, the transactions at issue, and the basis for the claim of treaty non-compliance.

8.3 Mandatory Binding Arbitration

Argentina has not opted into mandatory binding arbitration under the MLI (Article 18) and has not included binding arbitration clauses in its bilateral tax treaties. This means that MAP resolution remains subject to the political will of both competent authorities, with no guaranteed mechanism for final resolution if they cannot reach agreement.

Argentina's position reflects a broader reluctance among many developing and emerging economies to accept mandatory arbitration, given concerns about sovereignty, the costs of arbitration proceedings, and the perception that arbitration panels may not give sufficient weight to developing-country perspectives.

Argentina has not signalled any near-term intention to adopt mandatory binding arbitration.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Argentina does not currently operate a formal advance pricing agreement (APA) programme. While the domestic transfer pricing rules contemplate the possibility of pre-filing consultation regarding transfer pricing methodology, there is no established programme under which taxpayers can obtain a legally binding ruling on the arm's length price for prospective transactions.

9.2 Other Mechanisms

Argentina does not operate a comprehensive system of advance tax rulings comparable to those available in many OECD jurisdictions. However, taxpayers may submit consultations on specific legal issues under a binding ruling procedure. A binding ruling, once issued, is legally binding on the tax authority with respect to the specific taxpayer and the specific factual circumstances described in the consultation. The process is relatively slow and the scope of questions addressed is limited; as a result, rulings on transfer pricing or complex treaty issues are uncommon.

Non-binding interpretative resolutions provide guidance on legal questions but are not formally binding on third parties. They are, nonetheless, an important source of administrative interpretation in practice and are routinely consulted by tax practitioners when no formal ruling has been sought.

Trends and Developments

Contributed by:
Daniel Rinci, Tomas Cabanelas, Fernando García and Marisa Majul
Rinci & Asociados

Rinci & Asociados is a team of professionals, accountants and lawyers, with over 20 years of experience in accounting services, legal consulting and tax litigation. The firm has a dynamic tax department in Argentina that regularly advises domestic and international clients in the agro-industrial, transportation and financial sectors, as well as private clients. The firm not only advises and litigates from a legal perspective, but also takes a holistic approach towards taxes. For this, it relies on a team of lawyers, accountants and tax-related collaborators who work together to provide an all-encompassing taxation and tax compliance service, which requires a deep understanding not just of applicable regulations and case law, but also of accounting, the tax authorities' modus operandi and software applications, tax criminal law, etc. The legal team has experience in double taxation, tax planning, and payroll taxes, as well as tax claims before federal and provincial authorities.

Authors



Daniel Rinci is a certified public accountant and lawyer, with a master's in tax law. His extensive experience in tax matters, and his dual professional vision as an accountant and lawyer, have allowed him to work on various types of litigation, including before the National Supreme Court of Justice. In 2001 he founded Rinci & Asociados to provide advice to various companies with the conviction that teamwork, proactivity and clear and honest communication with the client were the path to successful service provision.



Tomas Cabanelas graduated from the University of Buenos Aires with a focus on tax law. He then completed postgraduate studies in economic criminal law (UBA) and a master's in criminal law (Universidad Austral), with specialisations in wealth management, organisation and protection of assets, family planning, stock investments, finance and accounting. In addition to his role at Rinci & Asociados, he is an assistant teacher in the master's in tax law degree course at the Universidad Católica Argentina and an assistant teacher in the introduction to tax law course at the Argentine Association of Fiscal Studies (AAEF).



Fernando García is a certified public accountant and has been a partner at Rinci & Asociados since 2012, single-handedly leading the accounting department. After several years of experience, he has developed a high level of technical knowledge, the product of consistent training and updating. He provides a unique perspective to agricultural companies.



Marisa Majul is a certified public accountant who has a degree in international commerce, and a master's in finance and tax law. At Rinci & Asociados, she generates key information for decision-making through the design and development of indicators and dashboards. Marisa also has extensive experience in internal processes control and achievement of objectives.

Contributed by: Daniel Rinci, Tomas Cabanelas, Fernando García and Marisa Majul, **Rinci & Asociados**

Rinci & Asociados

Estudio Rinci & Asociados
Av. Santa Fe 830 - 2° Floor
Buenos Aires
Argentina

Tel: +54 011 5031-8980
Email: Info@estudiorinci.com
Web: www.estudiorinci.com

Political Shift in Argentina

Javier Milei won the 2024 presidential elections in Argentina campaigning on a free market and lower public spending, as opposed to the more interventionist policies of previous governments. This sharp shift came with political, economic and legal uncertainties that persist to date.

The economic administration is summarised by the government in three main "anchors": budget surplus, monetary restriction and exchange rate flotation. Milei also strongly campaigned on dollarisation of the economy, but over time this objective has shifted to currency exchange deregulation and the free choice of foreign currency in domestic contracts.

Previous governments in Argentina have tried – and failed – to implement similar policies. During the 1990s and again in the second half of the 2010s, free market policies were implemented, leading to market crashes, exchange rate volatility and public outrage. Eventually, policies returned to the status quo, which in turn meant big losses for companies and individuals who had invested under free market policies.

So far, the government has introduced important economic changes without triggering a major crisis. Previously existing foreign exchange prohibitions – *cepo cambiario* – were dropped without an exchange rate crash, inflation was mostly controlled – although not eliminated, sovereign risk diminished, and political crises regarding defunding of pensions, universities and social programmes were mostly averted.

Regarding legislation, several business-oriented laws were implemented despite a minority in congress. In particular, a regime for large investments (RIGI) was passed, which provides a guarantee of regulatory, customs, tax and foreign exchange stability for 30 years for investments over USD200 million.

However, many reforms introduced via presidential decree were ruled out by the courts or by congress, such as an intended labour reform and government restructuring attempts.

This whole transition had winners and losers: oil and gas, mining and agricultural activities have been driving economic growth, while retail and industry are down due to lower import taxes and regulations.

Regarding taxation, significant changes have been implemented (see "Tax reforms" below). Import taxes, tariffs, excise taxes and other taxes were mildly reduced. A tax amnesty and a tax moratorium were also implemented, although historically this happens on average once per presidential term.

General VAT and income tax rates remain at the same levels of 21% and 35%, with no changes in sight. There were attempts by the government to lower these rates but they were unsuccessful and the issue is very complex: federal taxes are distributed between the federal government and the provinces at a fixed rate, and this distribution represents a large share of public revenue for the latter. Thus, any lowering of these rates would severely impact provincial budgets, leading to firm opposition.

Although Milei's party won the mid-term elections with over 40% of the popular vote, economic and political actors are still cautious regarding Argentina's economic and political future, mainly due to a history of somewhat erratic changes.

Ongoing Reforms

Important reforms have been passed by congress during Milei's government, including special investment regime, taxation and labour reforms.

The Large Investment Incentive Regime (RIGI)

Argentina has long struggled to attract sustained foreign investment, hampered by regulatory uncertainty, currency controls, and an unpredictable tax environment. The Large Investment Incentive Regime – *Régimen de Incentivos para Grandes Inversiones* (known by its Spanish acronym, RIGI) – represents the Milei administration's most ambitious attempt to change that narrative. Enacted as part of the broader "Bases Law" reform package, the RIGI offers a comprehensive bundle of tax breaks, foreign exchange freedoms, and legal protections specifically designed for large-scale, long-term projects.

Qualifying investments

The RIGI targets investment projects of at least USD200 million in nine sectors: forestry, tourism, infrastructure, mining, technology, steel, energy, and oil and gas. Each sector carries its own minimum investment threshold – oil and gas upstream projects, for instance, require a minimum of USD600 million, while general projects start at USD200 million. To access the regime, investors must operate through a dedicated special purpose vehicle (SPV) the sole purpose of which is the promoted project. The entry window is currently open until July 2027, following a one-year extension granted by the Executive in early 2026.

Projects must also qualify as long-term investments, meaning that the expected cash flows generated in the first three years cannot exceed 30% of the capital planned for that same period – a built-in filter to ensure the regime is used for genuinely capital-intensive ventures rather than short-term plays.

The incentive package

The financial benefits are substantial. On the tax side, corporate income tax is capped at 25% – well below the standard 35% rate. Investors benefit from accelerated depreciation, unlimited loss carry-forwards (transferable to third parties after five years), and a significantly reduced withholding tax on dividends: 7% initially, dropping to 3.5% after seven years. Imports of capital goods, spare parts and consumables are fully exempt from customs duties, and export duties are lifted entirely after two to three years of operation, depending on the project type.

On the foreign exchange front – historically one of the most sensitive issues for foreign investors in Argentina – the RIGI provides a gradual but complete path to free currency disposal. Export proceeds become progressively exempt from the obligation to be settled in the local foreign exchange market, reaching 100% freedom four years after the project commences operations (three years for strategic export projects). Capital contributions, loans and other financing flows are freely available from the outset.

Stability and legal protection

Perhaps the most distinctive feature of the RIGI is its 30-year stability guarantee. Once admitted to the regime, an SPV locks in the tax, customs, and foreign exchange conditions in force at the time of its application. Future legislative changes that would normally negatively affect those conditions simply do not apply. The law goes further, granting these rights constitutional-level protection equivalent to private property – meaning any national or provincial rule that undermines them is automatically null and void.

Disputes between investors and the State can be submitted to international arbitration under the rules of the ICC, the PCA, or ICSID, without the need to exhaust domestic administrative remedies first. The seat of arbitration must be outside Argentina.

Early results

The regime is already generating tangible activity. As of early 2026, 12 projects have received formal approval, representing combined commitments in excess of USD26 billion. These include major energy infrastructure such as the Vaca Muerta Sur pipeline,

LNG facilities in Río Negro, lithium projects by Rio Tinto in Salta, and several mining developments across the country's northern provinces. Most of Argentina's provinces have either joined the regime or are in the process of doing so, extending its protections at the local level as well.

The Medium Investment Incentive Regime (RIMI)

If the RIGI was Argentina's bid to attract billion-dollar megaprojects, the RIMI is its counterpart for the rest of the business world. Enacted as part of the Labour Modernisation Law passed in early 2026, the Medium Investment Incentive Regime – *Régimen de Incentivo para Medianas Inversiones* (known by its Spanish acronym, RIMI) – extends a package of tax benefits to small and medium-sized enterprises willing to invest in productive assets within Argentina.

Target businesses

The RIMI is open to micro, small and medium-sized enterprises, covering productive investments made during the two years following its entry into force. To qualify, businesses must be in good standing: outstanding tax, customs or social security debts will disqualify an applicant, as will criminal convictions in tax, customs or foreign exchange matters. Companies already benefiting from the RIGI or any other incentive regime cannot access the RIMI for the same investments.

Qualifying investments

The regime targets real, tangible investment: the acquisition, manufacture, or importation of new movable assets (excluding cars), as well as construction works, all of which must be directly dedicated to productive activities in Argentina. Financial assets, portfolio investments and inventory are explicitly excluded. Minimum investment thresholds vary by company size, ranging from USD150,000 for micro enterprises up to USD9 million for the largest qualifying businesses. Notably, certain agricultural assets – irrigation systems, anti-hail netting, high energy-efficient equipment, and livestock – are eligible regardless of the amount invested, making the regime particularly attractive for the agribusiness sector.

Benefits

The RIMI offers two concrete tax advantages. The first is accelerated depreciation for income tax purposes. Rather than deducting the cost of an asset gradually over its full useful life, beneficiaries can write it off much faster – in as little as a single year for irrigation equipment, anti-hail netting, energy-efficient machinery, and livestock. For general movable assets, depreciation is compressed into two annual instalments, and for construction works, into a schedule based on 60% of the standard useful life estimate. In practical terms, this means the tax burden of an investment is felt sooner and more intensely, improving cash flow in the critical early years.

The second benefit is an accelerated VAT refund. VAT credits arising from qualifying investments can be recovered after just three monthly tax periods, rather than waiting for the credit to be absorbed gradually against future VAT liabilities. For capital-intensive projects, this can represent a meaningful improvement in liquidity.

Conditions and penalties

The benefits are tied to asset permanence. If a qualifying asset leaves the company's balance sheet within two fiscal years of being put into use, the incentives are forfeited. Misuse of the regime can result in repayment of the tax benefits received, plus interest and a penalty of up to twice the value of the benefit applied.

Tax reforms

Argentina's recent legislative wave has delivered meaningful changes to the country's tax framework. Drawing from different pieces of legislation, the reforms touch on income tax, VAT, excise taxes, the criminal enforcement of tax obligations, and the relationship between taxpayers and the revenue authority. Taken together, they represent one of the most substantive reconfigurations of Argentina's tax landscape in years.

Income tax changes

Several targeted amendments to the Income Tax Law are worth noting:

- Tax losses will now be indexed to consumer price increases, providing meaningful protection against inflationary erosion of carry-forward losses.
- The existing exemption for income earned on term deposits for individuals has been extended to foreign currency deposits, a change of obvious relevance to investors holding dollar-denominated savings.
- Rental income from residential property is now exempt from income tax, and gains on the sale of real estate are also tax exempt, both changes applying only to individuals.
- Foreign individuals who obtain Argentine citizenship through investment will not be treated as Argentine tax residents on that basis alone – a clarification that will be relevant for HNW individuals exploring residency-by-investment structures.

Excise taxes abolished

Excise taxes on insurance, mobile and satellite telephones, luxury goods, and certain motor vehicles, recreational boats and aircraft are eliminated. The vehicle tax in particular had been in place for over a decade, carrying rates of up to 35% that had long distorted the local car market, creating significant cost overruns even for mid-range models.

Simplified filing and the "fiscal plug"

The Fiscal Innocence Act introduces a voluntary Simplified Income Tax Return regime for individuals with annual income of up to ARS1 billion (approximately USD700,000 at the time of publication) and total assets below ARS10 billion (approximately USD7 million at the time of publication), verified over the preceding three fiscal years. Under this regime, the revenue authority pre-fills the return, and a taxpayer who accepts and pays it on time is granted a "fiscal plug" – immunity from civil and criminal claims for that period, except in cases of undeclared invoiced income or the use of fraudulent documentation. Past periods not yet prescribed benefit from a presumption of accuracy, effectively limiting the authority's ability to reopen them.

Individuals enrolled into this system will allegedly be able to deposit cash in banks without tax consequences and without being asked about the fund's origins. The main objective is to get individual taxpayers with undisclosed funds – usually cash – to enter them into the financial system. However, there are small loopholes that could jeopardise this operation's legality in some cases, especially if a new government rose to power.

Shorter limitation periods for compliant taxpayers

For registered taxpayers who have filed their returns on time and settled their balances, the statute of limitations for the tax authority to assess and claim taxes is reduced from five years to three. The reduction holds as long as the authority does not challenge the return on the basis of a significant discrepancy – defined as a difference of at least 15% between what was declared and the authority's assessment, or a difference exceeding the simple evasion threshold, or the use of fraudulent invoices. Provincial and municipal taxes will now follow the same limitation periods established under the national Tax Procedure Law, a harmonisation measure that removes the inconsistencies that previously existed across jurisdictions.

Redraft of the tax crime regime

The Fiscal Innocence Act brings perhaps the most structurally significant changes. The monetary thresholds at which a tax shortfall becomes a criminal offence have been raised dramatically – in some cases by a factor of 60 or more. Simple tax evasion now requires an underpayment of at least ARS100 million (up from ARS1.5 million), while the threshold for aggravated evasion rises to ARS1 billion. All thresholds will be adjusted annually from 2027 onwards in line with an inflation index, preventing the same erosion in real value that had rendered the old figures so disconnected from economic reality. Criminal proceedings will also be barred once the revenue authority's power to assess taxes is prescribed.

Mechanisms to resolve criminal exposure through payment have been clarified and made more accessible. Full voluntary payment of outstanding tax plus interest before a formal complaint is filed will prevent criminal prosecution altogether – a one-time benefit available per taxpayer. If proceedings have already begun, the action can be extinguished by paying the outstanding amount plus a 50% surcharge within 30 business days of being formally charged.

The reform also significantly curtails the circumstances in which the tax authority is required to file criminal complaints. Disputes arising from interpretative or technical-accounting differences, or where the taxpayer proactively discloses their methodology before or simultaneously with filing their return, will generally not trigger criminal proceedings. The same applies where a taxpayer files original or amended returns before receiving notice that an audit has commenced.

Argentina's Labour Modernisation Law

Spanning 218 articles across 26 titles, the labour reform represents the most far-reaching change of Argentina's employment framework in recent years. It has three stated objectives: to curb the country's notorious litigation culture around employment disputes, to bring more workers into the formal economy, and to reduce the administrative burden on employers – particularly small and medium-sized businesses.

The reform touches several aspects of the employer-employee relationship: how contracts are structured, how severance is calculated, how working time can be arranged, how strikes are regulated, and how digital platform workers are classified.

Dedicated funding mechanism

One of the most commercially significant changes concerns the calculation of severance pay on dismissal without cause. The baseline formula – one month's salary per year of service – remains intact, but the law now draws a clear line around which payments actually count as salary for this purpose. The 13th-month bonus (*aguinaldo*), accrued holiday pay, and performance bonuses are expressly excluded from the calculation base. For variable-pay employees, the law takes the average of the highest recurring monthly earnings over the previous year, defining "recurring" as payments received in at least six months of the last calendar year. The effect is to narrow the calculation base and reduce the scope for inflated severance claims – a practice that had become a significant source of employment litigation.

The law also introduces a mandatory employer-funded reserve (*Fondo de Asistencia Laboral* or FAL) designed to pre-finance future severance obligations. Large companies must contribute 1% of their monthly payroll to the fund; small and medium-sized enterprises contribute 2.5%. The fund is exempt from claims by creditors, managed by entities authorised by the National Securities Commission, and can be drawn upon to cover severance on dismissal, death or voluntary retirement. Importantly, employers receive an equivalent reduction in their social security contributions, meaning the net additional cost is offset at the outset. The FAL comes into force on 1 June 2026, with a possible six-month extension.

This mechanism represents a meaningful conceptual shift: rather than treating severance as a contingent liability that crystallises only upon termination – and is often disputed in court – the FAL converts it into a structured, predictable funding obligation. For finance and accounting teams, the practical consequence is that severance provisioning becomes considerably more straightforward.

Redefining what counts as salary

The law introduces a new category of "dynamic remuneration components" – discretionary bonuses and merit awards that an employer can grant without those payments becoming an acquired right of the employee. In other words, an employer can now offer performance-linked pay without the risk that a pattern of such payments will be treated as contractually guaranteed compensation for severance or other purposes. Tips and gratuities are also formally excluded from the definition of salary. Medical coverage, mobile phone and internet expenses, meal allowances and car allowances likewise fall outside the salary definition, removing them from the base for payroll taxes and benefit calculations.

The law also permits, for the first time, the payment of salaries in foreign currency – a meaningful development in a country where the gap between the official and unofficial exchange rates has long created uncertainty for multinational employers trying to attract and retain talent by paying in US dollars.

A lighter administrative touch

Several administrative reforms reduce the day-to-day compliance burden. The obligation to maintain physical payroll books is abolished: registration with the Federal Tax Authority (*Agencia de Recaudación y*

Control Aduanero or ARCA, formerly the AFIP) now satisfies the employer's record-keeping requirements. Existing payroll books must be preserved for ten years but no longer need to be kept after that. Pay slips can now be issued and signed digitally, and the previous requirement to produce two physical copies is gone. Work certificates can be made available through ARCA's online portal, eliminating a frequent source of post-employment disputes in which former employees claimed they had not received their documentation on time.

For companies that use subcontractors, the reform also narrows the circumstances in which a principal company can be held jointly and severally liable for the subcontractor's employment obligations. Provided the principal verifies the subcontractor's compliance with labour and social security requirements, it will not be exposed to joint liability – a significant change for businesses that rely on contracted services.

Flexible working arrangements

The law introduces a bank-of-hours scheme allowing employers and employees to agree in writing on the accrual and compensation of overtime – replacing automatic overtime pay with compensatory time off or other agreed arrangements. Part-time workers can voluntarily take on additional hours beyond their contracted schedule. Vacation entitlements, previously required to be taken in a single continuous period between October and May, can now be split into segments of at least seven consecutive days at any time of the year. These changes reflect a broader push to align the statutory framework with flexible arrangements that were already common in practice but technically non-compliant.

Indexation of debts

Perhaps the most commercially impactful change for businesses currently facing employment claims is the reform of how court-awarded amounts are updated over time. Under the previous system, each jurisdiction applied its own interest rates to labour claims, producing wildly divergent outcomes and creating strong incentives for litigation. The new law standardises the approach: all labour credits will now be updated by the Consumer Price Index plus a fixed annual interest rate of 3%. Compound interest (interest on interest) is prohibited, except where a debtor falls into default after a final court award.

The law also allows court judgments to be paid in instalments – up to six monthly payments for large companies, and up to 12 for small and medium-sized enterprises. While the unions and the main labour confederation have challenged certain provisions before the courts – and some aspects were briefly suspended pending review – the core changes to interest calculations have already been upheld by an appeals chamber of the National Labour Court.

Labour amnesty

The law creates a Labour Formalisation Incentive Regime that allows employers to regularise undeclared employment relationships – in effect, a labour amnesty. Employers who come forward can secure the cancellation of penalties and administrative fines, the extinction of criminal exposure under labour laws, and removal from the public registry of sanctioned employers. Remaining social security debts can be restructured into payment plans of up to 72 monthly instalments. A separate new hire incentive reduces employer social security contributions to 2% for the first four years when hiring previously undeclared or unemployed workers.

Unions, strikes and essential services

The law tightens the rules governing industrial action. Solidarity contributions charged to non-union members are capped at 2% of salary. Workplace blockades and the detention of people or goods during disputes are now classified as serious violations. More significantly, the list of sectors required to maintain minimum service levels during strikes has been substantially expanded. Sectors such as education, health, energy, and telecommunications must maintain at least 75% of normal operations; transport, banking, the food chain, and export activities must maintain at least 50%. The practical effect is to limit the disruptive reach of industrial action in the sectors that matter most to business continuity.

What this means for foreign investors

Taken together, these reforms shift the playing field in a direction that most foreign businesses will find more navigable. Severance obligations become more

predictable and easier to provision for. The scope for employment litigation to produce outsized awards is narrowed. The administrative machinery around employment relationships is simplified

That said, the reform is not without complexity. The transitional provisions – particularly around pending court cases and the staggered entry into force of different provisions – require careful attention. The political and legal contestation around the law is not yet fully resolved, with union challenges still working their way through the courts.

One of the key reforms that would end excessive labour litigation appears to have been left behind, however: a soft cap on severance payments based on the employee's salary, and a hard cap on any amount claimed as severance. Without them, employer's claims can still become exorbitant budget provisions leading to uncertainty.

AUSTRIA



Law and Practice

Contributed by:
Clemens Philipp Schindler and Mohamed Hemdan
Schindler Attorneys

Contents

1. Sources and Principles p.30
1.1 Domestic Sources of International Tax Law p.30
1.2 Hierarchy of Sources p.30
1.3 OECD Model/United Nations Influence on Treaty Practice p.30
1.4 Multilateral Instrument p.30

2. Territoriality, Residence and Permanent Establishment p.31
2.1 General Principle of Territorial Taxation p.31
2.2 Tax Residence of Individuals p.31
2.3 Taxation of Resident Individuals p.31
2.4 Taxation of Non-Resident Individuals p.32
2.5 Tax Residence of Legal Entities p.32
2.6 Definition of Permanent Establishment p.33

3. Taxation of Cross-Border Income p.33
3.1 Income From Immovable Property p.33
3.2 Business Profits p.34
3.3 Passive Income p.34
3.4 Capital Gains p.35
3.5 Employment Income p.36
3.6 Other Income p.36

4. OECD/G20 Global Tax Reform p.37
4.1 Pillar One – Amount B p.37
4.2 Pillar One – Amount A p.37
4.3 Pillar Two p.37
4.4 Specific Features or Deviations of Pillar Two p.37
4.5 Digital Services Tax p.37

5. Anti-Avoidance and Anti-Evasion Measures p.37
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.37
5.2 Anti-Avoidance Mechanisms p.39
5.3 Blacklists and Non-Cooperative Jurisdictions p.39
5.4 Reporting Obligations and Disclosure Regimes p.40
5.5 Role of Tax Authorities and Enforcement Measures p.40

6. Penalties and Sanctions p.41
6.1 Tax Penalties p.41
6.2 Criminal Penalties p.41
6.3 Interaction Between Tax and Criminal Procedures p.42

7. Administrative Co-Operation p.42
7.1 Legal Framework for Administrative Co-Operation p.42
7.2 Exchange of Information Clauses in Tax Agreements p.43
7.3 Other Forms of International Tax Collaboration p.43

8. Mutual Agreement Procedures and Arbitration p.43
8.1 Availability and Legal Basis p.43
8.2 Application Deadlines p.43
8.3 Mandatory Binding Arbitration p.43

9. Dispute Prevention p.44
9.1 Advance Pricing Agreements p.44
9.2 Other Mechanisms p.44

Schindler Attorneys is a leading Austrian law firm for transactional work, with extensive experience in the fields of M&A, private equity, finance, real estate, corporate, employment, IP/IT, antitrust/FDI, tax and securities law. The firm's ambition is to provide top-quality services and to become an instrumental part of its clients' businesses. Schindler Attorneys seeks long-term, collaborative relationships with clients and partner firms, as the team firmly believes that trusted co-operation is the key to success. The firm is frequently involved in cross-border matters and co-ordinates or participates in multi-jurisdictional teams on a regular basis.

Authors



Clemens Philipp Schindler is a founding partner of Schindler Attorneys. Clemens is admitted in Austria as an attorney-at-law and a certified public tax adviser, focusing on corporate and tax advice in relation to public and private M&A, private equity and corporate reorganisations – most of which have a cross-border element. Furthermore, he specialises in international holding structures. Clemens is a graduate of the International Tax LLM Program at NYU Law School.



Mohamed Hemdan is an associate at Schindler Attorneys. Prior to joining Schindler Attorneys, Mohamed spent two years at Grant Thornton Austria, specialising in corporate and international tax. In his work, Mohamed focuses on national and international tax advice, M&A, corporate reorganisations and private client matters. Mohamed has also contributed to publications in the field of tax and transaction advisory. Mohamed holds an LLM degree from the Vienna University of Economics and Business, where he graduated summa cum laude. He also completed an exchange semester at the Law Faculty of the University of Aberdeen in the United Kingdom.

Schindler Attorneys

Kohlmarkt 8-10
1010 Vienna
Austria

Tel: +43 1 512 2613
Fax: +43 1 512 2613 888
Email: office@schindlerattorneys.com
Web: www.schindlerattorneys.com

SCHINDLER
ATTORNEYS

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main sources of international tax law in Austria can be summarised in three categories:

- domestic rules dealing with international tax law matters, generally referred to in Austria as "foreign tax law" (*Außensteuerrecht*);
- international law, of which double taxation treaties (DTTs) are the most important example; and
- EU law.

Domestic provisions dealing with international tax law matters (*Außensteuerrecht*) are not codified in a single law; rather, the individual provisions can be found throughout the various tax laws. For example:

- rules on determining foreign income and recognising foreign losses can be found in the Income Tax Act;
- rules on distributing dividends between international intercompany shareholdings can be found in the Corporate Income Tax Act; and
- rules on granting potential unilateral relief from double taxation can be found in the Federal Fiscal Code, etc.

Under Austrian federal constitutional rules, where international treaties are accessible for direct application within the domestic legal system (as is the case with DTTs), the process of transformation – ie, incorporation into domestic law – is carried out through what is known as the "general transformation of international law". This means that transformation occurs without the need to specifically implement the DTT into domestic law through the enactment of further legislation.

International tax law cases are adjudicated by Austrian courts – in particular, the Federal Fiscal Court and, on appeal, the Supreme Administrative Court. In their roles, the courts provide authoritative interpretation of the applicable sources of international tax law. Where a case involves the application of EU law, the jurisprudence of the CJEU may also provide (binding) guidance for the (EU-conforming) interpretation of the respective legal sources.

Additionally, the Austrian Ministry of Finance (MoF) issues extensive administrative guidelines on international tax law matters, including so-called "Express Reply Services" (EAS), which provide (non-binding) opinions of the MoF on specific requests relating to international tax law. While not legally binding on the requesting taxpayer or the tax authorities, these opinions are highly influential in practice.

Austria maintains an extensive treaty network, having concluded more than 90 DTTs. Most of Austria's treaties are based on the OECD Model Tax Convention and follow the standard allocation of taxing rights, with certain minor modifications.

1.2 Hierarchy of Sources

In general, tax treaties have the status of ordinary legislation in the Austrian legal system and are therefore equal in rank to domestic laws. However, based on the principles of lex posterior (newer laws prevail over older ones) and lex specialis (more specific laws prevail over general ones), tax treaties generally take precedence over domestic tax provisions.

While conflicts (ie, treaty override) may technically arise when domestic legislation is introduced subsequent to a treaty, in practice the tax authorities and courts aim for a harmonious interpretation that avoids open conflict between treaty law and domestic law.

EU law holds a special position, as it takes precedence over domestic law in areas covered by the EU treaties and directives. This means that domestic rules must be interpreted and applied in conformity with EU law, and, where necessary, domestic provisions may be overridden to comply with EU law.

1.3 OECD Model/United Nations Influence on Treaty Practice

Austria's tax treaties generally follow the OECD Model Tax Convention, with certain minor modifications.

1.4 Multilateral Instrument

In June 2017, Austria signed the Multilateral Instrument (MLI), and in September 2017 it deposited its

instrument of ratification with the OECD. The MLI came into force in Austria on 1 July 2018.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Austria has no territorial tax regime; instead, it applies a worldwide income taxation principle for residents (unlimited tax liability), while non-residents are only taxed on Austrian-source income (limited tax liability).

2.2 Tax Residence of Individuals

Individuals are considered tax-resident in Austria if they have a dwelling available for personal use or a habitual abode in Austria, which is deemed to be the case after a six-month stay in Austria in a calendar year.

Nationality generally does not play a role in determining tax residence under Austrian law. However, it may serve as a (final) indicator under a DTT in cases of doubt.

In practice, the "centre of vital interest" of an individual is a criterion that is often used to determine their tax residence when they are deemed a resident of both Austria and another state under a DTT. The centre of vital interest is generally understood to be where an individual has their closest personal and economic ties (ie, family, friends, work, etc), with the personal ties generally being of higher relevance.

Under general rules, a secondary residence in Austria would also suffice to establish tax residence and unlimited tax liability in Austria. However, the Regulation on Domestic Secondary Residences (*Zweitwohnsitz-Verordnung*) sets out special rules for individuals whose centre of vital interest has been located outside Austria for more than five years. In such cases, unlimited tax liability arises only in years in which the secondary residence is used for more than 70 days; otherwise, the individual is subject only to limited tax liability. A central prerequisite for these rules to apply is that the individual keeps records of the days the Austrian secondary residence is used. Correspondingly, the individual can choose not to make use of this Regulation by not keeping records, in which case they are subject to unlimited tax liability.

2.3 Taxation of Resident Individuals

Tax-resident individuals are subject to unlimited tax liability, meaning they are taxed on their worldwide income. Austria applies a progressive income tax rate to most categories of income, whereas certain types of income, such as capital income, may be subject to flat tax rates.

The progressive tax rates for 2026 are as follows:

- up to EUR13,539 – 0% tax rate;
- EUR13,539 to EUR21,992 – 20% tax rate;
- EUR21,992 to EUR36,458 – 30% tax rate;
- EUR36,458 to EUR70,365 – 40% tax rate;
- EUR70,365 to EUR104,859 – 48% tax rate;
- EUR104,859 to EUR1 million – 50% tax rate; and
- more than EUR1 million – 55% tax rate (until 2029).

Although income of resident individuals is subject to worldwide taxation, relief mechanisms exist to avoid double taxation of foreign-source income (eg, income attributable to foreign permanent establishments). Such relief mechanisms can be broadly summarised into these categories.

- Relief under bilateral agreements (DTTs), where, depending on the type of income concerned, the applicable DTT may provide for an exemption (with progression) or for a credit of the foreign tax against Austrian tax.
- Relief under unilateral domestic measures, primarily through crediting of foreign taxes where no relief under a DTT is available.
- Relief under EU law, where EU directives and fundamental freedoms may require relief from double taxation or the deductibility of certain expenses. That said, EU directives would typically already be transposed into Austrian tax law (eg, the Parent-Subsidiary Directive, implemented under Section 10 of the Corporate Income Tax Act), in which case the respective domestic provisions would apply directly.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals are taxed only on their Austrian income – ie, income from Austrian sources (limited tax liability). Whether income is considered Austrian is determined exclusively under Austrian tax law.

The types of income that are subject to limited tax liability are exhaustively defined in Section 98 of the Income Tax Act. These include:

- income from agriculture and forestry carried on in Austria;
- income from independent personal services exercised or exploited in Austria;
- business income where a permanent establishment is maintained in Austria, a dependent agent is appointed or Austrian immovable property is involved;
- employment income exercised or exploited in Austria, as well as remuneration paid out of Austrian public funds;
- certain types of capital income;
- income from letting and leasing of Austrian immovable property or rights registered in Austrian public registers; and
- capital gains from the disposal of Austrian real estate.

As a general rule, Austrian-source income of non-residents is taxed at the ordinary progressive income tax rates (see **2.3 Taxation of Resident Individuals**). However, for the purpose of rate calculation, an additional amount of EUR11,077 (as of 2026) is added to the taxable income of non-residents. The reason for this adjustment is that, from an Austrian tax perspective, the standard tax-free minimum (EUR13,539 in 2026) should not be recognised for non-residents by Austria, but rather by the individual's state of residence. As a result, non-residents effectively retain a basic tax-free income of EUR2,462 in Austria.

Depending on the type of income, taxation of non-residents may be carried out through payroll withholding tax (for employment income), capital gains withholding tax (for certain capital income), the "non-resident withholding tax" for specific types of income, or by assessment.

In particular, income subject to the non-resident withholding tax (Section 99 of the Income Tax Act) includes:

- income from independent personal services as an author, lecturer, entertainer, architect, sportsperson, artist or participant in an entertainment performance, if the activities are performed or exploited in Austria;
- profits from cross-border multi-tiered transparent partnerships where the recipients are not disclosed;
- royalties and fees for the use of know-how;
- directors' fees;
- income from commercial or technical consultancy services;
- income from cross-border hiring out of labour;
- distributions or deemed distributions from real estate funds, if the real estate is located in Austria under the condition of public-placement; and
- income from dormant partnerships.

2.5 Tax Residence of Legal Entities

Under Austrian tax law, a legal entity (ie, a corporation) qualifies as tax-resident if either its registered seat or its place of management is located in Austria. The registered seat of a corporation is deemed to be located at the place stipulated in the articles of association and registered in the commercial register. The place of management is deemed to be where the corporation's management makes its executive day-to-day management decisions. Earlier practice concentrated primarily on where the relevant decisions are taken (for example, as evidenced by board minutes), but the Austrian tax authorities now increasingly also consider where such decisions are communicated and implemented by the management. Resident corporations are subject to unlimited tax liability in Austria.

Under the majority of Austria's DTTs, the place of effective management is decisive in the case of the dual residence of a corporation (the "tie-breaker rule"). In practice, no substantive distinction is generally made between the domestic term "place of management" and "place of effective management" under treaty law, whereas a corporation can only have one place of effective management under a DTT.

2.6 Definition of Permanent Establishment

An Austrian permanent establishment (PE) is defined under domestic tax law as a fixed place where a business is carried out. In particular, this includes:

- the place where the management is carried out (ie, a place of management);
- branches, warehouses, purchasing and sales offices, and other establishments used by the entrepreneur or a permanent representative to carry on the business; or
- construction or installation sites that last, or are expected to last, more than six months.

Austrian tax authorities generally follow the OECD Model Tax Convention and its Commentary when interpreting the PE concept. Most recently, following the 2025 update to the OECD Commentary, the Austrian MoF confirmed that the new Commentary is applicable in Austria, which is particularly relevant for home-office PE cases.

However, deviations in the PE definition may arise under certain DTTs (eg, few DTTs include provisions regarding the establishment of a service PE). Additionally, the domestic PE concept may be considered broader than the PE as defined under the OECD Model Tax Convention, since auxiliary or preparatory establishments (*Hilfsbetriebsstätten*) are not generally excluded under Austrian law. This means that a PE under the OECD Model Tax Convention will always constitute a PE under the Austrian definition, but not vice versa.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

In Austria, income from immovable property (rental income and capital gains derived from the sale of immovable property) is taxable for both residents and non-residents, as follows.

Residents

Rental income is taxed as part of the individual's annual taxable income, which is subject to the progressive income tax rates. Expenses incurred in generating the rental income are generally deductible, whereas specific rules may apply, in particular to depreciation of buildings as well as to renovation and maintenance costs. The net rental result is taxed together with the individual's other taxable income in the annual income tax assessment.

Technically, adhering to the worldwide taxation principle, rental income from non-Austrian immovable property is also subject to tax in Austria for resident individuals (and corporations). However, where a DTT is applicable, the right to tax such rental income is typically assigned to the state in which the immovable property is located.

Capital gains derived from the disposal of immovable property (real estate capital gains) are generally subject to a special tax rate of 30%; in this case, the gain is taxed separately and does not form part of the individual's regular income tax assessment. However, the individual may opt to have the gain taxed at the standard progressive income tax rates instead.

For resident corporations, rental income from immovable property is subject to the standard corporate income tax rate of 23%. The same applies to real estate capital gains, which are likewise taxed at the corporate income tax rate of 23%.

For corporations, income from immovable property is assessed exclusively via assessment within the corporate income tax return (unlike in the case of individuals, where a self-calculation mechanism may apply for real estate capital gains).

Non-Residents

Non-resident individuals are generally required to file an income tax return if their taxable Austrian-source income exceeds EUR2,462, unless a withholding tax has been applied that represents the final settlement of the tax liability. In the case of rental income from immovable property, no withholding tax is typically levied (unlike, for example, royalties and fees for the use of know-how). Consequently, any tax due on such rental income from immovable property that is located in Austria is generally collected via the regular assessment procedure.

Capital gains derived from the disposal of Austrian immovable property (real estate capital gains) are subject to a special tax rate of 30%. However, non-resident individuals also have the option of having the gain taxed at the standard progressive income tax rates via assessment.

For non-resident corporations, rental income as well as real estate capital gains derived from Austrian immovable property are taxed at the standard corporate income tax rate of 23%.

3.2 Business Profits

Business profits are taxable in Austria, with a distinction drawn between individuals (subject to the progressive income tax rates) and corporate entities (subject to the corporate income tax rate of 23%). Partnerships are treated as tax-transparent for income tax purposes. Therefore, profits are allocated to the partners and taxed at their level, either at progressive income tax rates (for individual partners) or at 23% corporate income tax rate (for corporate partners). Some distinctions can, however, be made between residents and non-residents, as follows.

Residents

Business profits derived by individuals are subject to the progressive income tax rates and are taxed together with the individual's other taxable income in the annual income tax assessment.

In general, profits for small businesses (with annual turnover up to EUR700,000) and certain freelance professionals (eg, lawyers, tax advisers, artists and medical doctors) are determined on a cash basis, whereas larger businesses calculate their profits using the accrual accounting method.

Business profits derived by corporations are subject to the corporate income tax rate of 23% and are taxed as part of the annual corporate income tax assessment (regardless of whether profits are retained or distributed).

Non-Residents

With regard to business profits derived by non-resident individuals, a sufficient nexus to Austria is generally required. In principle, non-residents are taxed on business/commercial income only if the activity is carried out through an Austrian PE, through a dependent agent in Austria or in connection with Austrian immovable property. Certain categories of income form exceptions and are taxable even without the mentioned nexuses, such as income from technical advisory services, cross-border hiring out of labour, and income derived by artists or sportspersons.

Non-resident individuals are generally required to file an income tax return in respect of Austrian-source business profits if their taxable Austrian-source income exceeds EUR2,462, unless a withholding tax has been applied that constitutes a final settlement of the tax liability (see **2.4 Taxation of Non-Resident Individuals**).

Non-resident corporations are subject to limited tax liability in Austria with respect to any Austrian-source business income (ie, unlike for individuals, there is no minimum income threshold), typically where the business is carried on through an Austrian PE. Such profits are subject to a corporate income tax rate of 23% and are generally collected via assessment, unless specific withholding rules apply (see **2.4 Taxation of Non-Resident Individuals**).

3.3 Passive Income

Dividends

The withholding tax (WHT) is principally levied on dividends at the applicable tax rate for individuals (27.5%) or corporations (23%).

EU corporations that are subject to a limited tax liability benefit from the EU Parent-Subsidiary Directive, under which they may obtain a 100% tax exemption for dividends.

There is no obligation to withhold and pay WHT in Austria (so-called relief at source) if:

- a profit distribution is made by an Austrian corporation;
- the EU recipient corporation (parent company) has a form listed in the Directive;
- the EU recipient corporation holds at least 10% of the share capital of the Austrian subsidiary; and
- a minimum holding period of one year is observed.

There is nevertheless an obligation to withhold and pay WHT in Austria if there are reasons to suspect abuse. Abuse is assumed, in particular, if the EU recipient corporation has no function and its sole purpose is to avoid Austrian WHT. In order to rule out such a suspicion of abuse, the EU recipient corporation must submit a written declaration to the Austrian corporation that it carries out an activity that goes beyond the scope of asset management, employs its own staff and has its own business premises (so-called proof of substance). These declarations must be submitted on a form provided by the Austrian Federal Ministry of Finance. On this form, a certificate of residence of the EU recipient corporation must also be obtained from the competent EU tax office promptly after the profit distribution.

If proof of substance cannot be provided by the EU recipient corporation (which will often be the case with a holding company or an acquisition vehicle), relief at source is generally not possible and the Austrian corporation would have to withhold WHT on the distribution and pay it to the Austrian tax office. The EU recipient corporation would then still have the option of applying to the Austrian tax office for a refund of the WHT from the following year. In such a refund procedure, the Austrian tax office would check whether there actually is abuse, or whether the conditions for an exemption from WHT are met and therefore the WHT should be refunded to the EU recipient corporation. As soon as a refund is granted, relief at source can subsequently be granted for three years under certain conditions (ie, for distributions of a similar size and provided that the foreign holding structure remained unchanged).

The dividend WHT can also be reduced at source under the applicable DTTs in accordance with the formal requirements laid down in the DTT Relief Regulation (*Doppelbesteuerungsabkommen-Entlastungsverordnung*). A recipient seeking to reduce the dividend WHT will have to provide a certificate of residence issued on Austrian forms "ZS-QU1" (for individuals) or "ZS-QU2" (for legal entities). Legal entities must also satisfy the relevant substance requirements as previously mentioned. The DTT Relief Regulation limits the dividend WHT exemption at source in certain cases – for example, foreign foundations, trusts and investment funds do not qualify for dividend WHT exemption at source.

Austrian corporate income tax law further includes a special provision that allows a foreign entity to apply for a refund of the total Austrian WHT – including the share of WHT that Austria is entitled to tax under the relevant DTTs – if the foreign entity is unable to credit the Austrian WHT in its country of residence (eg, because the dividend income is exempt).

At the EU level, further provisions and limitations regarding WHT are expected under the FASTER Directive (effective from 1 January 2030), which should contribute to streamlining refunds for listed dividends.

Royalties

Royalties paid to non-residents are generally subject to a 20% WHT. A reduction or full exemption may be available under a DTT or the EU Interest and Royalties Directive. The procedures for claiming relief or a refund follow the same process as for dividends.

Interest

There is no WHT applicable to interest paid to non-resident corporations, unlike interest paid to non-resident individuals. Specifically, interest accrued on Austrian bank deposits or Austrian bonds received by non-resident individuals, where the paying or depositary agent is located in Austria, is subject to WHT at a rate of 25% (or 27.5% in the case of Austrian bonds).

3.4 Capital Gains

Capital Gains Derived by Individuals

Capital gains (and losses) arising from the sale or disposal of business assets are taxed as ordinary business income.

Where shares are part of the private assets of an individual, capital gains resulting from the sale of shares, securities or other financial assets are taxed at a flat tax rate of 27.5% (the same rate applicable to other capital income such as dividends). Capital gains on the sale of shares are also taxed at this flat tax rate if the individual's stake is below 1%.

Capital Gains Derived by Corporations

Capital gains (and losses) realised on assets of an Austrian corporation are taxable at the statutory corporate income tax rate of 23%, unless it concerns a capital gain on a shareholding that meets the requirements for the participation exemption to be applied.

Under the international participation exemption, capital gains and dividend income from qualified shareholdings are fully exempt from the Austrian corporate income tax base (a participation amount of at least 10% and an uninterrupted holding period of at least one year are required).

Under the domestic participation exemption, profit distributions of domestic corporations are exempt from taxation, and this exemption applies without any minimum holding requirements and holding periods. However, capital gains realised on the alienation of shares in domestic corporations are subject to regular taxation.

For the taxation of capital gains derived from the sale of immovable property, please see **3.1 Income From Immovable Property**.

3.5 Employment Income

Income from employment is generally taxed at the standard progressive income tax rates. Certain bonus payments may, however, be taxed at reduced rates under specific conditions (eg, holiday and Christmas bonus salary payments).

The taxation of employment income from assignments or cross-border employment generally depends on the duration of the assignment and the applicable DTT. Inbound cross-border employees (ie, individuals who work in Austria but are tax-resident in another state) are generally subject to limited tax liability in Austria under the rules described in **2.4 Taxation of Non-Resident Individuals**. In practice, this means that Austrian income tax is levied only on the income earned from work performed in Austria, while earnings from employment performed in other states are not taken into account. As employee assignments regularly involve cross-border tax obligations, Austria has also enacted a regulation that sets out the rules for WHT relief for the assignment of personnel (*Verordnung zur Abzugsteuerentlastung bei Arbeitskräftegestellung*).

As most Austrian DTTs follow the OECD Model Tax Convention, employment income will be taxable in Austria for non-resident employees if either:

- the work is performed in Austria for more than 183 days in a 12-month period; or
- the remuneration is paid by or borne by an Austrian employer or an Austrian PE.

It should be noted that, for these purposes, Austria disregards whether the income is paid by the foreign civil law employer to the employee, and instead considers whether, from an economic perspective, the Austrian employer ultimately bears such remuneration.

Austria has concluded special regulations for cross-border workers in certain DTTs (Germany, Liechtenstein and Italy). In these cases, the special provisions of the respective DTTs must be taken into account. Typically, this results in individuals qualifying as cross-border workers under the relevant DTTs being taxed in their country of residence, regardless of the general rules under which Austria may have had the right to tax income from work performed on its territory.

Austria has not adopted specific legislation addressing the tax consequences of remote work. That said, the consequences and risks of remote working are essentially covered by existing Austrian tax law, which generally provides that, when interpreting tax law, the true economic substance of the facts is decisive. Furthermore, the implications of remote working are often addressed in administrative guidelines, rather than through new legislation. For instance, the Austrian transfer pricing guidelines include provisions for home office PE arrangements. Recently, the Austrian MoF confirmed in a written notice the full applicability of the updated OECD Commentary regarding remote work and home office arrangements.

3.6 Other Income

The Austrian Income Tax Act differentiates between seven types of income sources:

- income from agriculture and forestry;
- income from self-employment;
- business income;
- employment income;
- income from capital;
- income from letting and leasing; and
- other income defined under the Austrian Income Tax Act.

Income derived from these categories can generally be subsumed under the provisions of the OECD Model Tax Convention – ie, Austria does not provide for different types of income not addressed within the OECD Model Tax Convention. In cases where certain income taxed under Austrian tax law does not clearly fall within the distributive rules of the OECD Model Tax Convention (eg, annuity payments from private life insurance policies), such income is typically treated as falling within Article 21 of the OECD Model Convention (Other Income).

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Austria has not (yet) implemented the Streamlined Approach for baseline marketing and distribution activities (Amount B) into its domestic law. Therefore, the rules relating to Amount B will not apply to baseline marketing and distribution activities in Austria. However, Austria is committed to accepting the outcome of applying Amount B to such activities in covered jurisdictions with which it has a DTT. The list of these covered jurisdictions is published and maintained by the OECD.

4.2 Pillar One – Amount A

In general, the Austrian government has consistently supported the BEPS project at all times, which includes Pillar One Amount A, having agreed to the 2021 "Two-Pillar Solution" and authorising negotiations for a multilateral convention (MLC) in 2022.

4.3 Pillar Two

The Austrian MoF has published its draft for a Pillar Two implementation law, the Austrian Minimum Taxation Act (*Mindestbesteuerungsgesetz*), which came into force on 31 December 2023. However, the Undertaxed Profit Rule (UTPR) (*Sekundäre Ergänzungssteuer*) largely only applied to financial years beginning on or after 31 December 2024.

4.4 Specific Features or Deviations of Pillar Two

The Austrian implementation of Pillar Two is based on the EU Pillar Two Directive (2022/2523), which in turn builds on the OECD Global Anti-Base Erosion (GloBE) Model Rules – ie, there are no notable deviations from the OECD framework, apart from minor deviations in the specific design of the implementation and its application (eg, Austria implemented Pillar Two by means of a separate law rather than amending the Austrian Corporate Income Tax Act).

4.5 Digital Services Tax

Austria already took unilateral action on digital taxation in 2019 by introducing the Digital Tax Act (*Digitalsteuergesetz*). This legislation imposes a 5% tax on online advertising services provided for consideration within Austria, but only for corporations surpassing defined turnover thresholds from such services.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax fraud and tax evasion constitute distinct fiscal criminal offences that are punishable under the Austrian Fiscal Criminal Act, provided that the respective criminal offence elements are fulfilled.

Tax Evasion

Tax evasion is defined in Section 33 of the Austrian Fiscal Criminal Act and comprises several alternative offence variants, whereas all variants share the requirement of intent (either conditional intent or knowledge) and a reduction of taxes, which may also be only temporary. According to this Section 33, tax evasion occurs:

- where a person intentionally reduces taxes by violating fiscal obligations of notification, disclosure or truthfulness;

- where a person intentionally causes a reduction of VAT by failing to submit advance notifications under Section 21 of the VAT Act, or causes a reduction of wage tax, the employer's contribution to the Family Burden Equalisation Fund, or related surcharges by breaching payroll record obligations under Section 76 of the Income Tax Act and related regulations;
- where a person intentionally causes a reduction of taxes by using goods for which preferential tax treatment was granted for purposes other than those qualifying for such treatment without prior notification to the tax authority; or
- where a person wrongfully declares losses.

The latter offence variant was only recently introduced by the Fraud Prevention Act 2025 (*Betrugsbekämpfungsgesetz*, BBKG 2025) on 1 January 2026. Previously – ie, before 2026 – if an excessive loss was declared in a given tax year, the declaration itself was not punishable because no tax reduction had yet occurred, meaning that criminal liability could arise only in a subsequent year if the unjustified loss declaration resulted in a reduction of tax payable in that later period.

Tax Fraud

Tax fraud is regarded as a qualified form of tax evasion and is defined in Section 39 of the Austrian Fiscal Criminal Act. It applies where a person commits tax evasion, smuggling, evasion of import or export duties, or duty fencing under Section 37 of the Act, and the imposition of penalties is exclusively reserved to the courts (ie, the offence is committed with (conditional) intent and the evaded value exceeds EUR150,000) and the offence is committed by using one of the following methods:

- the use of false or falsified documents, data or other evidence, with the exception of untrue tax declarations, registrations, notifications, records and determinations of taxable income required under tax, monopoly or customs law;
- the use of fictitious transactions or other fictitious acts (Section 23 of the Federal Fiscal Code); or
- manipulation of computer-generated books or records required under tax or monopoly law through the design or use of software capable of altering, deleting or suppressing data.

Anti-Tax Avoidance and Anti-Abuse Rules

Austrian anti-tax avoidance and anti-abuse rules have to be distinguished from offences under criminal tax law, as they constitute overarching principles inherent to Austrian tax law. In particular, these rules do not themselves establish a criminal offence, nor may the intent to circumvent them (automatically) be equated with the intent required for tax evasion or tax fraud under the Fiscal Criminal Act. The main anti-avoidance rules in Austria are set out in the Austrian Federal Fiscal Code.

Section 22 of the Federal Fiscal Code provides for the main general anti-avoidance rule that applies in the case of abusive tax structures, which is the case where a legal structure only makes sense when taking into account the related tax-saving effect, given that the main purpose or one of the main purposes is to obtain a tax advantage that defeats the object or purpose of the applicable tax law.

According to the administrative guidelines, abuse is generally presumed only in multi-step schemes and can be rebutted with valid economic reasons. Nonetheless, it is considered that an abuse within the meaning of Section 22 of the Federal Fiscal Code, in conjunction with Section 44 of the Reorganisation Tax Act as amended by the 2018 Annual Tax Act, must, in principle, be assessed regardless of whether a specific objective is achieved through a single reorganisation step or a multi-step process. In this regard, the 2018 Annual Tax Act introduced a statutory definition of Section 22 of the Federal Fiscal Code in line with the EU Anti-Tax Avoidance Directive (ATAD), applicable to arrangements from 1 January 2019, under which an arrangement is deemed abusive if its essential purpose is to secure a tax advantage contrary to the law, unless valid economic reasons exist.

Practically speaking, Section 23 of the Austrian Federal Fiscal Code is applied less frequently than Section 22, but it states that transactions or acts that are not genuinely intended by the parties involved ("sham transactions"), performed solely to conceal facts relevant for taxation purposes, will be disregarded and

taxation will be based on the true facts that the taxpayer sought to conceal.

In addition, Section 21 of the Austrian Federal Fiscal Code can be considered as another general anti-avoidance rule that provides for the "substance over form" approach. Per this approach, the economic substance of facts and circumstances – rather than their formal appearance – is to be taken into consideration when assessing tax questions.

Furthermore, due to Austria's participation in the MLI, the proportion of general anti-abuse rules (GAARs) in Austrian DTTs has gradually increased, especially since the inclusion of a GAAR under Article 6 MLI is part of the "minimum standard" and must therefore be included in all DTTs for which the respective contracting states have opted to apply the MLI.

5.2 Anti-Avoidance Mechanisms

Beyond the previously mentioned provisions contained in the Austrian Fiscal Criminal Act and the GAAR under the Austrian Federal Fiscal Code (see **5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes**), Austrian tax law has been heavily influenced by the OECD's efforts to combat BEPS. Hence, Austrian tax law contains several additional anti-avoidance measures – some of which implement the OECD's recommendations and EU directives – generally designed to combat and reduce the attractiveness of abusive tax structures by limiting the tax advantages that might otherwise arise. In particular, these include the following.

- The non-deductibility of interest that is not at arm's length.
- The non-deductibility of interest paid to associated companies in low-tax jurisdictions (tax level below 15%).
- The non-deductibility of interest on loans taken out for the acquisition of a participation in another associated company.
- The inclusion of Controlled Foreign Company (CFC) rules.
- The switch-over from the exemption method to the credit method in the case of dividends distributed from low-taxed subsidiaries (tax level below 15%) to Austria, if the main source of income of the low-tax foreign entity stems from passive income – whereas this rule will not apply if the CFC rules already apply.
- The denial of relief at source for WHT in cases of potential tax avoidance (eg, companies with little or no substance).
- The implementation of the ATAD and the OECD's recommendations to combat BEPS, some of which have already been mentioned (such as the CFC and GAAR rules), but also including, for example:
  (a) mandatory disclosure rules for certain cross-border arrangements (DAC6);
  (b) hybrid mismatch rules;
  (c) an interest limitation rule in line with ATAD, limiting the deductibility of interest to 30% of tax EBITDA when debt leverage exceeds the group average – whereas several key exceptions exist (EUR3 million de minimis, standalone entities, loans prior to 17 June 2016, equity test based on consolidated accounting); and
  (d) incorporating the global minimum tax rules (Pillar Two) into national law (Minimum Taxation Act).

Moreover, Austrian tax law contains exit taxation rules for individuals as well as for corporations that apply whenever Austria's right to tax hidden reserves acquired in Austria is restricted or forfeited.

5.3 Blacklists and Non-Cooperative Jurisdictions

Austria generally follows the EU list of non-cooperative jurisdictions for tax purposes, commonly referred to as the "EU blacklist", which includes jurisdictions that are assessed on the basis of a number of criteria established by the European Council, including tax transparency, fair taxation and the implementation of international standards aimed at preventing BEPS.

For Austrian companies, the EU blacklist is particularly relevant for the (blanket) classification of foreign subsidiaries as low-taxed for the purposes of the CFC rules, for reporting obligations under DAC6 in the case of certain cross-border intra-group payments to associated companies resident in such jurisdictions, and for the publication of country-by-country public tax reports (CbCR).

Following the most recent update of the list in February 2026, Fiji, Samoa, and Trinidad and Tobago have been removed from the list, while Vietnam and the Turks and Caicos Islands have been added to the list., so that the EU blacklist currently comprises ten jurisdictions:

- American Samoa;
- Anguilla;
- Guam;
- Palau;
- Panama;
- Russian Federation;
- Turks and Caicos Islands;
- US Virgin Islands;
- Vanuatu; and
- Vietnam.

5.4 Reporting Obligations and Disclosure Regimes

Austria implements several mandatory reporting obligations, including as follows.

Reporting of certain cross-border arrangements is required by the Austrian EU Reporting Requirement Act (*EU-Meldepflichtgesetz*), through which DAC6 was transposed into national law.

Reporting is required for arrangements that pose a risk of tax avoidance, CRS circumvention, or obscuring beneficial ownership, if the first step occurred either between 25 June 2018 and 30 June 2020 or from 1 July 2020 onwards.

Responsibility for reporting generally falls to intermediaries (including those who design, market, organise, make available or manage the arrangement), although certain professionals (notaries, attorneys-at-law, certified public auditors and certified public tax advisers) may be exempt.

Arrangements are classified as either mandatory (reported regardless of tax advantage) or conditional (reported only if a main benefit is a tax advantage).

Additionally, Austria implements transfer pricing reporting standards (including CbCR), which have been updated and amended recently by the Austrian Transfer Pricing Documentation Act and published guidelines from the Austrian tax administration.

As part of the implementation of EU Directive 2021/2101, there are also reporting obligations for financial years beginning after 21 June 2024, for the purposes of "public CbCR" (*CbCR-Veröffentlichungsgesetz*).

More recently, Austria has implemented DAC8 (EU Directive 2023/2226), introducing the automatic exchange of information on crypto-asset income in line with the OECD reporting framework. This includes the adoption of a new Crypto Reporting Obligations Act (*Krypto-Meldepflichtgesetz*) and amendments to existing federal laws, including the Common Reporting Standard Act and the EU Mutual Assistance Act. From 1 January 2026, crypto-asset service providers will be subject to enhanced reporting, due diligence and registration obligations, with transaction data to be reported to the competent authorities in the following year (for 2026 by 31 July 2027).

Austrian tax law also includes a provision that enables the tax authorities to request from an Austrian interest payer the disclosure of the true economic recipient of the interest payments to ensure that tax-reducing payments at the payer's level correspond to taxable income at the recipient's level. In the case of non-compliance, the deductibility of the interest paid may be denied and further corporate income tax surcharges may be imposed.

Beyond the reporting obligations, Austrian tax law provides for a highly relevant voluntary self-disclosure provision incorporated under the Austrian Fiscal Criminal Act, which enables taxpayers to avoid criminal penalties for tax offences by proactively disclosing misconduct (and to pay the tax owed) before tax authorities detect or initiate proceedings.

5.5 Role of Tax Authorities and Enforcement Measures

The Austrian tax authorities have extensive powers to detect and investigate tax fraud and evasion. The most important tools in practice are tax audits, which take place relatively regularly (every few years), whereas there is no fixed audit cycle prescribed under Aus-

trian tax law. Taxpayers may be selected at random for a tax audit; however, if there are significant discrepancies between tax returns submitted in individual years, the likelihood of being selected increases.

During a tax audit and/or investigation, the tax authorities are entitled to review the taxpayer's accounting records, books and supporting documentation, and may request further information from the taxpayer. In this context, a particular role is played by the Austrian Fiscal Police, which operates as a specialised unit on behalf of the tax authorities. The Fiscal Police will typically become involved where immediate action is required – eg, in situations where information must be obtained without delay. Accordingly, they may be authorised to enter the taxpayer's premises, verify identities, question third parties (eg, employers, business partners, banks, etc) and carry out seizures. However, the Fiscal Police will not conduct a "regular" tax audit themselves; these are generally carried out by the audit units of the relevant tax office.

In this respect, it is important to distinguish between the type of tax audit concerned:

- "regular" tax audits as part of the administrative proceedings, which may apply to every taxpayer; and
- fiscal criminal audits that are only carried out where there is an indication of a fiscal criminal offence.

In general, taxpayers are required to co-operate during a "regular" tax audit, especially in cross-border situations where the obligation to co-operate is increased. However, during a tax audit under fiscal criminal law or tax investigations relating to criminal proceedings concerning tax offences, the taxpayer (ie, the accused person) is under no obligation to co-operate with the tax authorities.

6. Penalties and Sanctions

6.1 Tax Penalties

Impermissible tax avoidance – whether arising from cross-border transactions or purely domestic situations – may generally result in a reassessment of the tax liability, leading to the assessment of the amount of tax that would have been due had the abusive structure not been implemented (plus any applicable surcharges, penalties and interest).

That said, certain provisions are particularly relevant in a cross-border context – including, for instance, the arm's length principle under Austrian transfer pricing rules, which may limit deductible expenses or lead to an upward adjustment of the tax base, as well as sanctions for violations of reporting obligations under the Austrian implementation rules of DAC6, which applies for certain cross-border arrangements.

It may also be worth noting that international activities such as reorganisations, intra-group cross-border transactions and transfer pricing matters are often given more attention during tax audits, inter alia due to international efforts to combat tax evasion and prevent BEPS.

The competent tax offices are responsible for imposing and enforcing such measures – eg, reassessment of taxes due. In the event of an appeal by the taxpayer, the case falls within the jurisdiction of the Federal Fiscal Court, which may assess taxes due plus penalty surcharges. Importantly, however, a distinction must be made between cases of impermissible tax avoidance or tax offences below the threshold of fiscal criminal law on the one hand, and fiscal criminal proceedings on the other hand. The latter are covered in **6.2 Criminal Penalties** and **6.3 Interaction Between Tax and Criminal Procedures**.

6.2 Criminal Penalties

Austrian criminal tax law distinguishes between two types of fiscal criminal proceedings:

- administrative fiscal criminal proceedings (ie, tax authorities deal with the case); and
- judicial fiscal criminal proceedings (ie, the case falls within the jurisdiction of the criminal courts).

As a general rule, the competence depends on the seriousness of the offence. Less severe cases fall within the jurisdiction of the tax authorities acting as fiscal criminal authorities, whereas more serious offences are dealt with by the ordinary criminal courts. In particular, the tax authorities are competent in cas-

es involving negligent conduct as well as intentional offences where the amount of evaded tax does not exceed EUR150,000. By contrast, the ordinary courts have jurisdiction over intentional offences where the evaded tax exceeds EUR150,000 and over certain aggravated offences, such as cases involving cross-border VAT fraud.

Depending on the circumstances, a case may be transferred from the tax authorities to the courts or vice versa, which may occur, for example, where additional offences come to light or where the initially assumed threshold for court jurisdiction is subsequently not met.

Tax evasion is punishable by a monetary fine of up to 200% of the tax amount evaded (or unjustified tax credits). In cases of wrongfully declared losses, the relevant amount of tax evaded corresponds to the tax that would result from applying the applicable tax rate to the absolute amount of the improperly declared loss. For example, if a taxpayer incurs a legitimate loss of EUR20,000 and increases this loss to a total of EUR60,000 by unlawfully claiming additional expenses, the absolute amount of EUR40,000 is considered the "relevant value", to which the applicable tax rate is then applied. In addition to the fine, a prison sentence of up to four years may be imposed.

The primary sanction for tax fraud – as a qualified form of tax evasion – is imprisonment, which, depending on the defrauded value, may be up to five or ten years. A monetary fine may also be imposed; however, the maximum amount is limited by statutory provisions (up to EUR1.5 million or EUR2.5 million, and in the case of corporate fines up to EUR5 million or EUR8 million).

6.3 Interaction Between Tax and Criminal Procedures

In practice, every tax audit report may also be reviewed by a competent fiscal criminal officer from the perspective of fiscal criminal law. As a result, tax audits may lead to the initiation of fiscal criminal proceedings where indications of a fiscal offence are identified. Fiscal criminal proceedings may also be initiated where suspicious activities are reported to the authorities and preliminary investigations establish sufficient grounds for suspicion.

As described previously, a distinction must be made between administrative fiscal criminal proceedings and judicial fiscal criminal proceedings. While administrative fiscal criminal proceedings are conducted by the tax authorities acting as fiscal criminal authorities, judicial fiscal criminal proceedings are governed by the principles of ordinary criminal procedure, supplemented by specific provisions of the Austrian Fiscal Criminal Act.

In judicial fiscal criminal proceedings, the public prosecutor is the competent authority responsible for directing the investigation and prosecution. In such cases, the fiscal criminal authorities act as investigative bodies on behalf of the public prosecutor. In particular, the tax investigation unit within the Anti-Fraud Office conducts fiscal criminal investigations either on behalf of the public prosecutor's office or jointly with the criminal matters division, in accordance with the Austrian Fiscal Criminal Act and the ordinary criminal procedure rules.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Austria is among the jurisdictions that have agreed to implement the OECD/G20 standard for the automatic exchange of information. Under this framework, participating jurisdictions exchange tax-relevant information annually, with the first exchanges having taken place in 2017. The legal basis for this is the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

At the EU level, administrative co-operation is primarily based on the EU Directive on Administrative Cooperation (DAC) and its subsequent amendments.

In addition, Austria generally follows the OECD Model Tax Convention in its network of DTTs, which include provisions corresponding to Article 26 of the OECD Model Tax Convention regarding the exchange of information between the competent authorities.

Austria has also concluded seven tax information exchange agreements with Andorra, Gibraltar, Guernsey, Jersey, Mauritius, Monaco, and St Vincent and the Grenadines.

7.2 Exchange of Information Clauses in Tax Agreements

Austria fully participates in the exchange of information with other jurisdictions on the legal basis outlined in **7.1 Legal Framework for Administrative Co-Operation**. In particular, under Article 26 of the OECD Model Tax Convention regarding the exchange of information between competent authorities, which is followed by most Austrian DTTs, information may be exchanged automatically, spontaneously (without a prior request – eg, in the course of an administrative procedure) or upon request in relation to a specific case.

7.3 Other Forms of International Tax Collaboration

Austria participates in the OECD's International Compliance Assurance Programme (ICAP).

With regard to joint cross-border tax audits, Austria has implemented EU Directive 2011/16/EU on administrative co-operation, thereby providing a legal basis for joint as well as simultaneous tax audits.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Austria maintains comprehensive mutual agreement procedure (MAP) mechanisms to resolve cross-border tax disputes.

The primary legal basis for the MAP is Austria's network of DTTs, which generally follow the OECD Model Tax Convention and therefore contain provisions corresponding to Article 25 governing the MAP.

Another legal basis is the EU Dispute Resolution Directive, which has been implemented in Austria through the EU Tax Dispute Resolution Act (EU-BStBG). The Directive provides a structured dispute resolution mechanism for intra-EU cross-border tax disputes arising from differing interpretations or applications of DTTs or the EU Arbitration Convention, and ultimately allows for a binding decision if the competent authorities fail to reach an agreement. Once a taxpayer submits a request under this Act, access to the MAP under the relevant DTT or the EU Arbitration Convention is barred for the same dispute.

8.2 Application Deadlines

In general, taxpayers have three years from the date of the first notification of a measure that results or may result in taxation that does not comply with the relevant treaty (eg, issuance of the relevant tax assessment) to request a MAP. This time limit applies both under Article 25 of the OECD Model Tax Convention and under the EU Tax Dispute Settlement Act, whereas certain DTTs concluded by Austria contain deviating deadlines.

8.3 Mandatory Binding Arbitration

In some cases, Austria's DTTs also contain arbitration clauses similar to Article 25 paragraph 5 of the OECD Model Tax Convention. These clauses allow for the binding resolution of disputes where the relevant authorities are unable to reach a mutual agreement.

Taxpayers may also rely on the EU Arbitration Convention for disputes relating to transfer pricing. While the MAP under the EU Arbitration Convention is similar to that under DTTs, its key feature is the automatic and mandatory referral of the case to an arbitration panel if the competent authorities fail to reach an agreement within two years. The arbitration panel's opinion is binding and ultimately ensures the elimination of double taxation. In contrast, arbitration under a DTT is only available where the respective DTT expressly provides for it.

Furthermore, as mentioned under **8.1 Availability and Legal Basis**, the EU Tax Dispute Settlement Act provides for a MAP that can result in a binding decision being made in cases of intra-EU cross-border tax disputes that arise from different interpretations or applications of DTTs or the EU Arbitration Convention. Unlike the EU Arbitration Convention, the scope of the EU Tax Dispute Settlement Act is broader, as it does not only apply to transfer pricing disputes.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Since 2011, taxpayers in Austria have been able to apply for legally binding advance tax rulings under Section 118 of the Austrian Federal Fiscal Code, in order to obtain a unilateral advance pricing agreement (APA) which specifies transfer pricing criteria.

To ensure consistent treatment abroad, taxpayers can also seek bilateral or multilateral APAs. Bilateral APAs are based either on the MAP provisions of the DTTs (pursuant to Article 25 of the OECD Model Tax Convention) or on the EU Dispute Resolution Directive (implemented in Austria through the EU Tax Dispute Settlement Act). Bilateral APAs are usually requested by the taxpayer. However, taxpayers have no legal right to a successful MAP.

Taxpayers may also obtain informal, unilateral "good faith" rulings in circumstances where the above options are not available.

9.2 Other Mechanisms

The most relevant route to obtain tax certainty in relation to international tax matters in Austria is through advance tax rulings under Section 118 of the Austrian Federal Fiscal Code, since such rulings are legally binding on the tax authority, provided that the facts and legal framework presented by the taxpayer are complete and accurate. These rulings are generally only available for matters expressly listed in the law, which include international tax issues.

Taxpayers can also obtain a short opinion through an Express Reply Service on matters of international tax law (EAS) provided by the Austrian MoF, which is made publicly available. However, these opinions are issued on an anonymous and non-legally binding basis.

Austrian tax law also allows certain taxpayers (companies with a turnover above EUR40 million) to apply for a co-operative compliance programme in the form of a so-called "accompanying control" (*begleitende Kontrolle*), which is intended as an alternative to tax audits. This programme involves regular communication with the tax authorities, thereby enhancing legal certainty and planning security, where more extensive information than rulings may be provided. However, it also requires increased disclosure from participating companies.

BELGIUM



Law and Practice

Contributed by:
Robin Minjauw and Anouk Van der Mast
Tiberghien

Contents

1. Sources and Principles p.47
1.1 Domestic Sources of International Tax Law p.47
1.2 Hierarchy of Sources p.47
1.3 OECD Model/United Nations Influence on Treaty Practice p.47
1.4 Multilateral Instrument p.47

2. Territoriality, Residence and Permanent Establishment p.47
2.1 General Principle of Territorial Taxation p.47
2.2 Tax Residence of Individuals p.47
2.3 Taxation of Resident Individuals p.48
2.4 Taxation of Non-Resident Individuals p.48
2.5 Tax Residence of Legal Entities p.48
2.6 Definition of Permanent Establishment p.49

3. Taxation of Cross-Border Income p.49
3.1 Income From Immovable Property p.49
3.2 Business Profits p.50
3.3 Passive Income p.50
3.4 Capital Gains p.50
3.5 Employment Income p.51
3.6 Other Income p.51

4. OECD/G20 Global Tax Reform p.52
4.1 Pillar One – Amount B p.52
4.2 Pillar One – Amount A p.52
4.3 Pillar Two p.52
4.4 Specific Features or Deviations of Pillar Two p.52
4.5 Digital Services Tax p.52

5. Anti-Avoidance and Anti-Evasion Measures p.52
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.52
5.2 Anti-Avoidance Mechanisms p.52
5.3 Blacklists and Non-Cooperative Jurisdictions p.53
5.4 Reporting Obligations and Disclosure Regimes p.53
5.5 Role of Tax Authorities and Enforcement Measures p.53

6. Penalties and Sanctions p.53
6.1 Tax Penalties p.53
6.2 Criminal Penalties p.54
6.3 Interaction Between Tax and Criminal Procedures p.54

7. Administrative Co-Operation p.54
7.1 Legal Framework for Administrative Co-Operation p.54
7.2 Exchange of Information Clauses in Tax Agreements p.55
7.3 Other Forms of International Tax Collaboration p.55

8. Mutual Agreement Procedures and Arbitration p.55
8.1 Availability and Legal Basis p.55
8.2 Application Deadlines p.55
8.3 Mandatory Binding Arbitration p.55

9. Dispute Prevention p.56
9.1 Advance Pricing Agreements p.56
9.2 Other Mechanisms p.56

Tiberghien is a leading independent law firm focused on taxation and family (patrimonial) law and has more than 85 years of experience. With 145 lawyers across offices in Brussels, Antwerp, Ghent, Hasselt and the Grand Duchy of Luxembourg, the firm represents the largest independent tax practice at the Belgian Bar. Tiberghien is recognised for its multidisciplinary and international approach, pairing deep technical expertise with a pragmatic mindset, supported by strong in-house capabilities across tax compliance, family law, transfer pricing and valuations. The firm advises family-owned businesses, multinational groups, financial institutions, investment and pension funds, public bodies, non-profit organisations and private clients on complex strategic tax matters. Its strong academic tradition is reflected in the Tiberghien Tax Law Manual, updated annually. Tiberghien's international tax services team comprises 20 professionals and brings together Tiberghien lawyers with specialists from Tiberghien Economics. Rooted in Belgium but globally connected through its membership of WTS Global and close co-operation with leading firms worldwide, the team approaches tax as a strategic value driver for its clients.

Authors



Robin Minjauw joined Tiberghien in 2007 and became partner in 2018. His practice focuses on corporate taxation, international taxation, M&A, private equity and real estate projects. He is a trusted advisor to several Belgian multinationals, providing strategic tax guidance across their international operations. He also regularly represents clients in high-stakes international transactions and advises on the tax implications of cross-border restructurings and investments. Robin is a regular speaker at seminars in Belgium and abroad. He is the author of various tax publications. He is a member of International Fiscal Association (IFA), the International Tax Forum and other networks, reflecting his active involvement in international tax developments and best practices.



Anouk Van der Mast is a tax lawyer at Tiberghien and a member of the firm's multinational enterprises team. She focuses on Belgian corporate income tax and international taxation, advising multinational groups on their Belgian and cross-border activities. Anouk holds a Master of Laws degree and a Master-after-Master in Tax Law from KU Leuven. She began her career at a Big Four firm before returning to academia to research taxation in developing countries, with a focus on tax treaties and tax incentives. She joined Tiberghien in 2019 and is a member of the Brussels Bar, the Corporate Tax Alliance, and other professional networks. She has also authored several publications on corporate and international taxation.

Tiberghien

Tour & Taxis
Avenue du Port 86C B.419
BE-1000 Brussels
Belgium

Tel: +32 2 773 40 00
Fax: +32 2 773 40 55
Email: info@tiberghien.com
Web: www.tiberghien.com

Tiberghien.
Advocaten / Avocats / Lawyers

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main sources of international tax law in Belgium are:

- constitutional principles (eg, the principle of legality);
- EU law (eg, the Parent-Subsidiary Directive, the Interest and Royalties Directive and the Anti-Tax Avoidance Directives);
- domestic legislation (eg, the Income Tax Code (ITC 92));
- administrative guidance (eg, circular letters);
- case law; and
- tax treaties.

Belgium has established a comprehensive network of approximately 100 bilateral tax treaties (in force).

1.2 Hierarchy of Sources

Belgium adheres to the principle of treaty supremacy, pursuant to which duly ratified and officially published international agreements override conflicting domestic legislation. This hierarchical principle is equally applicable in tax matters.

1.3 OECD Model/United Nations Influence on Treaty Practice

Belgium, as founding member state of the OECD, predominantly aligns its treaty policy with the OECD Model Tax Convention. The OECD Model serves both as a reference point in treaty negotiations and as a tool for interpreting tax treaties. The Belgium Model Tax Convention (last updated in 2010) is therefore widely inspired by the OECD Model. The protocol to the Belgian Model Tax Convention explicitly confirms this by stipulating that the OECD Commentaries should be followed when interpreting the relevant tax treaty.

While Belgian tax treaties predominantly follow the OECD Model, the UN Model Convention also has a notable influence, particularly in Belgian tax treaties concluded with developing countries. Such treaties most frequently include the construction permanent establishment provision, the service permanent establishment provision and the withholding tax on royalties provision, as provided in the UN Model.

1.4 Multilateral Instrument

Belgium is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). Belgium signed the MLI on 7 June 2017 and deposited the instrument of ratification with the OECD on 26 June 2019. The MLI entered into force for Belgium on 1 October 2019. The MLI provisions entered into effect for withholding taxes levied as from 1 January 2020, provided that the MLI had also entered into force in the contracting state. With respect to all other taxes (including the corporate income tax), the MLI entered into effect for taxable periods beginning on or after 1 April 2020.

Belgium designated 99 bilateral tax treaties as Covered Tax Agreements (CTAs) at the time of signing the MLI. The number of tax treaties that are actually modified by the MLI is, however, lower, as the MLI only applies if both contracting states have ratified it and have designated the tax treaty as a CTA.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

In Belgium, the general principle of territorial taxation distinguishes between residents and non-residents. Residents, whether individuals or companies, are taxed on their worldwide income, meaning income from both Belgian and foreign sources, while non-residents are taxed only on Belgian-source income (eg, immovable property income or profits from a Belgian permanent establishment).

2.2 Tax Residence of Individuals

In Belgium, an individual is considered a Belgian tax resident if they have established either their domicile in Belgium or, if no domicile exists, the seat of their wealth in Belgium. Tax residency is determined based on factual circumstances, meaning nationality is irrelevant.

Tax Domicile

The primary criterion for tax residency is the individual's tax domicile, defined as the place where a person effectively and habitually lives with a certain degree of stability and continuity. This concept differs from the civil law notion of domicile, as Belgian tax law emphasises actual circumstances rather than intention.

Belgian law provides a rebuttable presumption: individuals registered in the Belgian National Register of Natural Persons are presumed to have their tax domicile in Belgium, unless they can provide sufficient evidence to the contrary. For married couples or legally cohabiting partners, tax residency is irrebuttably presumed to be at the location of their shared household.

In determining the tax domicile, authorities consider factors such as:

- the place where the individual effectively and permanently resides;
- where the individual lives and works;
- the location of the family household; and
- where the individual maintains their vital personal and social relations.

If these factors point to different jurisdictions, the location of the individual's family and personal ties is generally a more decisive factor than, for example, temporary work or physical presence.

Seat of Wealth

If an individual has no tax domicile in Belgium, they may still be considered a Belgian tax resident if Belgium is the place from which they manage their wealth or business affairs. This refers to where the person administers assets, supervises wealth management, or maintains the centre of their economic and professional interests. The physical location of assets is not decisive; the key factor is where the wealth is effectively managed.

2.3 Taxation of Resident Individuals

Individuals who are Belgian tax residents are generally subject to personal income tax on their worldwide income. This means that income earned both in Belgium and abroad is, in principle, taxable regardless of where it is paid or received.

However, in order to mitigate double taxation, worldwide income may not be fully taxed in Belgium due to (i) the application of a double tax treaty or (ii) a unilateral tax reduction.

If a tax treaty applies, certain foreign-sourced income (eg, income from immovable property) could be exempt from taxation in Belgium. It should be noted that under the "exemption with progression" method, the exempt income could still be considered when determining the applicable progressive tax rate on the taxpayer's income taxable in Belgium, which can increase the effective tax rate.

Second, if no tax treaty applies, Belgium may grant a unilateral tax reduction to partially relieve double taxation. This relief typically applies to specific types of foreign income and is generally limited to a portion of the Belgian tax that would otherwise apply, ensuring partial mitigation of double taxation even in the absence of a treaty.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals in Belgium are taxed on income that is earned or sourced within Belgium. The Belgian tax system relies on the principle of territoriality: only income with a sufficient connection to Belgium can be taxed. That connection may arise from the location of a property, the place where the activity is carried out, or the allocation of costs for a particular form of remuneration. Such income includes, among others, remunerations for employment exercised in Belgium, profits from business or professional activities carried out in Belgium through a Belgian establishment, rental income from Belgian property and certain dividends, interest, and royalties. The specific tax treatment varies depending on the type of income.

2.5 Tax Residence of Legal Entities

In Belgium, a legal entity is generally considered a Belgian tax resident if it meets three cumulative criteria:

- first, the entity must have legal personality under Belgian law or be a foreign entity established in a form comparable to a Belgian company with legal personality;
- second, the entity must carry out business or profit-making activities; and

- third, the entity must have its principal place of management or its effective seat in Belgium ("real seat doctrine").

A company whose statutory seat is located in Belgium is presumed to have its effective management in Belgium, unless it can demonstrate that its management is located abroad and that it is considered tax resident in another jurisdiction under its domestic law or the applicable tax treaty.

Under the "real seat" doctrine, companies could be subject to Belgian corporate taxation even if they are governed by the corporate law of another country.

2.6 Definition of Permanent Establishment

The concept of permanent establishment (PE) is defined in domestic law through the notion of a "Belgian establishment". This definition is clearly inspired by Article 5 of the OECD Model Tax Convention, as it uses the same core concept of a "fixed place of business" through which the activities of a foreign enterprise are wholly or partly carried on, and it includes a similar non-exhaustive list of examples.

However, the Belgian domestic definition is broader than the OECD Model definition in several respects. Most notably, Belgium applies a much lower threshold for construction sites, as a construction project may constitute a Belgian establishment if it lasts more than 30 days, whereas the OECD Model uses a 12-month threshold. In addition, Belgium provides for a wider dependent agent rule: a Belgian establishment may exist even if the intermediary does not have authority to conclude contracts, which goes beyond the standard OECD approach.

Belgium also includes an explicit service PE rule, whereby the provision of services in Belgium through individuals present for more than 30 days within a 12-month period (without a fixed place) may create a Belgian establishment. The concept of a service PE is not part of the standard OECD Model.

In its tax treaties, Belgium generally follows the OECD Model definition of a PE. The Belgian Model Tax Convention largely mirrors the structure and wording of Article 5 OECD Model. However, the Belgian Model Convention (2010) reflects the pre-BEPS version of Article 5 and does not fully incorporate certain BEPS Action 7 developments, such as the explicit anti-fragmentation rule introduced in the updated OECD Model.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Belgian Tax Residents

Belgian resident individuals are taxed on their worldwide income, including income derived from Belgian and foreign immovable property.

Belgian immovable property

- For private rental (unfurnished, private use by tenant), the taxable income is based on the indexed cadastral income (KI), increased by 40%, and taxed at progressive personal income tax rates.
- For professional rental (business use by tenant), the taxable income is based on the actual rental income received, reduced by either actual expenses or a lump-sum deduction (capped at 40%), and taxed at progressive rates.
- For furnished rental, the rental income is split between immovable and movable income. In the absence of contractual allocation, 40% is deemed movable income, taxed separately at 30% after a 50% lump-sum cost deduction.

Foreign immovable property

Since assessment year 2022, foreign real estate owned by Belgian residents is assigned a surrogate cadastral income, ensuring comparable treatment to Belgian property.

- Where a double tax treaty applies, foreign immovable income is generally exempt in Belgium with progression.
- In the absence of a treaty, such income is typically taxable in Belgium at half the normal personal income tax rate (Article 155, ITC 92).

Non-Residents

Non-resident individuals are taxed only on immovable property income sourced in Belgium.

The taxable base is determined in the same manner as for residents.

- Private rental: indexed cadastral income plus 40%.
- Professional rental: actual rent less deductible expenses.

Companies

For companies (resident or non-resident), immovable income is generally included under business profits and taxed under corporate income tax rules.

3.2 Business Profits

Companies

Companies that are tax resident in Belgium are subject to corporate income tax on their worldwide income. The standard corporate income tax rate is 25%.

Small companies within the meaning of the Belgian Companies and Associations Code may benefit from a reduced rate of 20% on the first EUR100,000 of taxable income, provided certain conditions are met, including a minimum annual remuneration to at least one director.

Non-resident companies are only subject to corporate income tax on income attributable to a Belgian establishment or Belgian-sourced income.

Individuals

Individuals carrying out business or professional activities in Belgium (eg, self-employed persons) are subject to personal income tax on their net professional income.

Personal income tax is levied at progressive rates, ranging from 25% to 50%. In addition, a municipal surcharge applies to the federal tax due.

Non-resident individuals are taxed in Belgium on professional income derived from activities carried out in Belgium or from prior activities performed in Belgium.

3.3 Passive Income

Passive income (eg, dividends, interest and royalty income) is typically subject to withholding tax at source. The taxation depends on the type of income and the recipient of the income.

For Belgian resident individuals, passive income (Belgian or foreign-sourced) is generally subject to a withholding tax of 30%. Exemptions and reduced rates could be applicable (eg, VVPR-bis, liquidation reserves). The withholding tax is final, which means that the income should not be declared in the income tax return.

For Belgian resident companies, passive income (Belgian or foreign-sourced) is included in their taxable profits and subject to the standard corporate income tax rate. However, dividends may benefit from the Dividends Received Deduction (DRD) regime, under which qualifying dividends are fully exempt if certain conditions are met, including a minimum participation threshold, a minimum holding period of one year, and a subject-to-tax requirement.

Non-residents are taxed only on Belgian-source passive income. The income is subject to a 30% withholding tax rate, but an exemption or reduced rate could apply under domestic law, an applicable tax treaty or an EU directive (eg, the Parent-Subsidiary Directive or the Interest and Royalties Directive).

3.4 Capital Gains

Personal income tax

Until 2026, Belgium did not impose a general capital gains tax on shares or other financial assets. As a rule, such capital gains were tax exempt, provided they were realised within the scope of the normal management of private wealth. Capital gains could, however, be taxed if they were realised in the context of a professional activity (and thus treated as professional income) or if they resulted from abnormal management, in which case a separate taxation at 33% (plus municipal surcharges) applied.

Belgium has introduced a general capital gains tax of 10% on financial assets realised as from 1 January 2026. The new capital gains tax applies to capital gains realised on the transfer for consideration of financial assets (including shares, crypto, liquidities and certain insurance contracts). The capital gains tax is limited to gains realised within the scope of normal management of private wealth. The new regime only targets the increase in value accrued as from 2026, meaning that historical capital gains remain exempt

through a step-up mechanism at the end of 2025. The capital gains tax also provides for an annual exemption of EUR10,000 per person and a limited carry-forward (maximum EUR1,000 per year) up to a maximum exemption of EUR15,000. Specific rules also apply to (i) shareholders holding a substantial participation (ie, more than 20%), including a threshold exemption and progressive rates for higher capital gains and (ii) internal capital gains (33%).

With respect to real estate located in Belgium, capital gains are taxable depending on the type of property and the holding period. Capital gains on buildings are, in principle, taxed at 16.5% if the property is sold within five years of acquisition. Capital gains on land are taxed at 33% if sold within five years and at 16.5% if sold between the fifth and eighth year. After these holding periods, capital gains on real estate are generally exempt.

Corporate Income Tax

Capital gains are taxed as profits of the company and therefore subject to the general corporate income tax rate. Capital gains on shares should be exempt from taxation if the three conditions of the participation exemption ("dividend received deduction") are cumulatively met.

- Minimum participation requirement: the company must hold either at least 10% of the share capital of the subsidiary, or a participation with an acquisition value of at least EUR2.5 million (in which case the shares must be qualified as "financial fixed assets" unless the company qualifies as a "small company").
- Minimum holding requirement: the shares must be held in full ownership for an uninterrupted period of at least one year.
- Subject-to-tax requirement: the subsidiary whose shares are sold must be subject to a normal corporate income tax regime. This means that it may not be established in a tax haven, nor benefit from a substantially more favourable tax regime than the ordinary tax regime. In other words, the subsidiary must be effectively subject to a tax comparable to Belgian corporate income tax.

3.5 Employment Income

In Belgium, employment income is subject to personal income tax at progressive rates ranging from 25% to 50% (increased with municipal surcharges and social security levies). Employment income is broadly defined and includes not only base salary, but also bonuses, benefits in kind, etc.

Belgium also provides a specific expatriate tax regime for inbound employees and qualifying researchers recruited abroad or seconded to Belgium. Under this regime, and subject to meeting several conditions – including a minimum remuneration requirement for employees or relevant qualifications for researchers – the employer may grant a tax-free allowance of up to 35% of the employee's gross remuneration as a lump-sum reimbursement of expenses. In addition, certain specific costs (eg, moving expenses, school fees for minor children, home set-up costs) can be reimbursed tax-free in addition to the 35% lump sum allowance. The regime applies for a maximum period of five years, which can be extended once by three additional years.

Belgium does not have a specific tax regime for remote working. Belgian residents are taxed on their worldwide income in Belgium; however, as a general rule, under tax treaties, employment income is taxable in the state where the work is physically performed (the "work state"). An important exception is the so-called 183-day rule which may shift taxing rights to the residence state. More specifically, this applies if the following conditions are cumulatively met:

- the presence of the employee in the work state does not exceed 183 days;
- the remuneration is paid by an employer not resident in the work state; and
- the remuneration is not borne by a permanent establishment in the work state.

3.6 Other Income

Belgium broadly aligns with the OECD Model Convention: income not covered by specific treaty provisions is dealt with under the "other income" provision, which generally allocates exclusive taxing rights to the residence state.

However, the Belgian Model Tax Convention includes a subject-to-tax clause to prevent double non-taxation. Under this mechanism, the source state may tax the income if it is not effectively taxed in the residence state.

Income that typically falls within the scope of the "other income" provision – depending on the wording of the relevant tax treaty – includes pensions of self-employed individuals, annuities (*lijfrentes*) and maintenance payments.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Belgium has recently clarified its position on Pillar One – Amount B in a circular letter.

In particular, Belgium accepts Amount B as part of its transfer pricing practice, but not as a generally binding or automatic simplification rule. The application is restricted to transactions where the involved jurisdiction:

- qualifies as a "covered jurisdiction" supporting Amount B;
- has implemented Amount B in its domestic law in line with the OECD 2024 Report (and subsequent updates); and
- has a double tax treaty in force with Belgium.

4.2 Pillar One – Amount A

This is not applicable.

4.3 Pillar Two

Belgium implemented the Pillar Two global minimum tax via the Law of 19 December 2023, which entered into force on 31 December 2023. Subsequent amendments have been made to align the legislation with the latest OECD updates and commentaries. It should be noted that the Belgian Constitutional Court submitted a preliminary question to the Court of Justice of the European Union regarding the validity of the UTPR rules introduced in Belgium following the transposition of the Pillar 2 Directive (still pending).

4.4 Specific Features or Deviations of Pillar Two

The Belgian legislation aligns closely with the OECD framework and remains fully compliant with the EU Pillar Two Directive. Furthermore, specific procedural provisions have been introduced to extend the existing tax prepayment regime to the Pillar Two top-up taxes (QDMTT, IIR and UTPR), mirroring the rules currently applicable to corporate income tax.

4.5 Digital Services Tax

The Belgian government has announced plans for a digital tax, though it intends to prioritise a harmonised EU framework. In the absence of a timely EU initiative, Belgium is prepared to implement a unilateral legal framework in 2027.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax evasion (fraud) and tax avoidance are not defined under Belgian law.

Tax evasion generally refers to an infraction of tax law committed with the aim of escaping or reducing taxation. It combines a material breach of the tax norm and a deliberate intention to avoid taxation. Tax evasion may lead to criminal prosecution. Tax avoidance, by contrast, involves legally structuring transactions to reduce tax liability. However, under the Belgian general anti-abuse rule (GAAR) (Article 344, §1 ITC 92), arrangements that are artificial and aimed primarily at obtaining a tax advantage contrary to the purpose of the law are considered "abusive".

5.2 Anti-Avoidance Mechanisms

Belgium has implemented a GAAR, as well as specific anti-abuse rules (SAARs) in order to combat tax abuse. The Belgian GAAR requires an objective element – acting contrary to the purpose of the tax provision(s) – and a subjective element – wholly artificial arrangements aimed solely at obtaining a tax advantage without any genuine economic objective. The GAAR allows the Belgian tax authorities to disre-

gard legal acts that are primarily tax-driven and contrary to the purpose of the law, unless the taxpayer demonstrates valid non-tax reasons.

Belgium also relies on certain SAARs, such as transfer pricing rules (based on the arm's length principle), Controlled Foreign Company (CFC) rules, Cayman tax rules (CFC rules for individuals), hybrid mismatch rules, interest limitation rules, and a specific anti-avoidance rule relating to the dividend received deduction.

Belgium also combats tax evasion and aggressive avoidance through the exchange of information with other jurisdictions (see **8. Mutual Agreement Procedures and Arbitration**).

5.3 Blacklists and Non-Cooperative Jurisdictions

Belgium applies both the EU list of non-cooperative jurisdictions for tax purposes (the "EU blacklist"), the OECD list, and a domestic tax haven list. Transactions with entities in listed jurisdictions are subject to reporting obligations, stricter deductibility conditions, the application of CFC rules (and Cayman tax rules), denial of tax benefits, and enhanced scrutiny by tax authorities. The overall objective is to discourage profit shifting and artificial arrangements involving low-tax or non-cooperative jurisdictions.

5.4 Reporting Obligations and Disclosure Regimes

Belgium has implemented an extensive set of reporting obligations. Key measures include DAC6 mandatory disclosure rules requiring intermediaries and taxpayers to report certain cross-border arrangements, as well as Country-by-Country Reporting and transfer pricing documentation for multinational groups. Financial institutions must report foreign account information under the Common Reporting Standards (CRS) and the Foreign Account Tax Compliance Act (FATCA), enabling the automatic exchange of data with other jurisdictions. Belgian entities must also register their ultimate beneficial owners (UBO) in the UBO register to enhance ownership transparency. In addition, companies must report payments to tax havens that exceed statutory thresholds, while AML legislation imposes obligations to report suspicious transactions. Together, these transparency mechanisms strengthen the detection of offshore income, artificial structures and profit-shifting arrangements.

5.5 Role of Tax Authorities and Enforcement Measures

Belgian tax authorities have broad investigative powers, including access to accounting and banking information, third-party data requests, on-site audits, unannounced business visits, and – subject to judicial authorisation – tax searches or raids (fiscal perquisitions). These tools are complemented by extended assessment periods and criminal prosecution mechanisms in cases of fraud.

6. Penalties and Sanctions

6.1 Tax Penalties

Legal Framework

Belgium applies a dual sanctioning system consisting of the following.

- Administrative tax penalties governed by the federal tax legislation (eg, ITC 92 and the VAT Code), and regional tax codes (eg, *Vlaamse Codex Fiscaliteit* – VCF). These penalties include tax increases, fixed administrative fines and specific sanctions relating to international obligations (eg, transfer pricing documentation or DAC6 reporting).
- Criminal tax penalties governed by the fiscal criminal provisions in the ITC 92 and the VAT Code when there is fraudulent intent.

These frameworks operate subject to core principles such as the legality principle, the motivation requirement, fundamental rights protections (eg, right to a fair trial) and the non bis in idem rule.

Competent Authorities

Competent authorities include:

- the Federal Public Service Finance (*FOD Financiën*) for administrative sanctions.
- regional tax administrations for regional taxes;
- the Public Prosecutor for criminal prosecutions; and
- correctional courts for the imposition of criminal penalties

Additionally, the tax administration co-operates with foreign authorities via EU directives (DAC), OECD conventions, and bilateral agreements.

6.2 Criminal Penalties

Tax fraud and tax evasion can lead to a range of criminal penalties. For general fiscal fraud, the law provides for imprisonment ranging from eight days to two years, as well as criminal fines between EUR250 and EUR500,000 (EUR500 to EUR1 million for legal persons) before the application of surcharges. These sanctions apply only where the authorities can prove fraudulent intent or an intent to cause harm.

When the fraud is considered "serious" (whether organised or not) – for example in cases involving organised schemes, falsified documentation, or large-scale evasion – the penalties become more severe and may include imprisonment of up to five years.

In addition, fiscal forgery, such as the use of false accounting records or fraudulent documents, is a separate offence punishable by one month to five years of imprisonment and substantial criminal fines, and it requires a demonstrated specific fraudulent intent.

Finally, since 2024, any form of tax fraud, even non-serious cases, may qualify as a predicate offence for money laundering, which can result in 15 days to five years of imprisonment, large financial penalties, and the mandatory confiscation of the proceeds of the offence.

6.3 Interaction Between Tax and Criminal Procedures

Under the Belgian una via framework, serious tax fraud must in principle be reported by the tax administration to the Public Prosecutor. The system is designed to prevent prohibited double punishment while ensuring co-ordinated enforcement. Following such a report, structured consultation takes place between the tax administration, the Public Prosecutor, and investigative services. The prosecutor generally indicates within three months whether the case will proceed primarily through criminal prosecution or remain within the administrative framework.

If criminal proceedings are initiated, administrative penalty proceedings are normally suspended in order to avoid double sanctioning. However, the establishment and recovery of the tax debt may continue, since the tax due is not considered as a criminal sanction. In the criminal proceedings, the tax administration may introduce a self-standing civil claim (*action civile*) to recover the unpaid tax, surcharges, and interest, enabling the criminal court to rule on both the criminal liability and the civil tax claim.

Although administrative and criminal tracks may, in certain circumstances, coexist, they must form a sufficiently co-ordinated and coherent overall response, in line with the non bis in idem principle. Any cumulative sanctions must pursue complementary aims, be closely connected in substance and time, and remain proportionate. Where both tracks are engaged, the criminal court must take prior administrative penalties into account to prevent excessive overall punishment.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

EU law, multilateral instruments and bilateral (tax) treaties form the basis of administrative co-operation in tax matters in Belgium.

Being an EU member state, Belgium has implemented the EU Directive on Administrative Cooperation (DAC), which establishes a harmonised framework to ensure administrative co-operation between EU tax authorities. The scope of the DAC has already been expanded several times covering, among others, the exchange of information relating to potentially tax-harmful cross-border arrangements (DAC6) and crypto-assets (DAC8). Belgium has also implemented both the CRS (as provided under DAC2) and the FATCA regulations.

Belgium is also a signatory to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which is considered the most comprehensive multilateral instrument for administrative co-operation, including in particular the exchange of information.

In addition to the general multilateral instruments, Belgium enhances administrative co-operation through more specific instruments such as the Benelux Agreement on Cooperation between Administrative and Judicial Authorities. The latter agreement enables the exchange of information relating to customs, excise and consumption taxes between the Benelux states. Belgium has also entered into several co-operation agreements

Moreover, Belgian bilateral tax treaties generally include an exchange of information provision based on the OECD Model (Article 26). This provision provides that the competent authorities shall exchange any information that is foreseeably relevant for the application of the treaty or for the enforcement of domestic tax laws, as long as it does not conflict with the tax treaty (Article 8.2).

Belgium has also concluded Tax Information Exchange Agreements (TIEAs) with countries with which it has no tax treaty (generally low or no tax jurisdictions).

7.2 Exchange of Information Clauses in Tax Agreements

The exchange of information under tax treaties can be "spontaneous", "automatic" or "on-request", depending on the text of the tax treaty (and protocols to the tax treaty). The competent authorities are responsible for exchanging information and must keep all information received strictly confidential.

7.3 Other Forms of International Tax Collaboration

Belgium participates in the OECD's International Compliance Assurance Programme (ICAP), which enables MNEs and tax administrations to collaborate in a co-operative risk-assessment process.

A new legal framework for joint tax audits – as introduced under DAC7 – has also been implemented in Belgian domestic law. It creates a legal basis for co-ordinated tax audits involving revenue authorities from two or more member states.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Belgium has a mutual agreement procedure (MAP) programme, which is regulated by:

- a special provision included in each Belgian tax treaty (generally Article 25);
- Convention No 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the "EU Arbitration Convention"); and
- the EU Directive on Tax Dispute Resolution Mechanisms (Directive 2017/1852) (the "Act of 2 May 2019").

Where the EU Arbitration Convention only applies to transfer pricing disputes between associated enterprises that are established in an EU member state, the Tax Dispute Resolution Mechanisms Directive also covers disputes over the interpretation and application of tax treaties.

The MAP included in tax treaties also allows taxpayers to resolve incorrect applications of the treaty. Certain older tax treaties require, for the MAP to apply, that measures taken by Belgium or the other contracting state have resulted, or will result, in double taxation contrary to the tax treaty. Double taxation is also a prerequisite for the MAP to apply under the EU Arbitration Convention.

8.2 Application Deadlines

With regard to the MAP provided in tax treaties, the request for a MAP should be filed within the limit provided in the relevant tax treaty. Each tax treaty specifies its own time limit for the MAP application. The MAP request under the EU Arbitration Convention and the Act of 2 May 2019 must be filed within three years from the first notification of the action which results or is likely to result in double taxation.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is not generally included in all Belgian tax treaties – even though a mandatory arbitration clause is included in the Belgian Model Tax Convention. Where included, the mandatory arbitra-

tion clause obliges the competent authorities (through an independent arbiter) to reach a binding decision when MAP negotiations fail. Belgium has also opted into the arbitration procedure ("final offer approach") under the MLI. As a result, an arbitration clause has been included in nearly 20 covered tax agreements.

The EU Arbitration Convention and the Act of 2 May 2019 provide for an arbitration resolution mechanism. If the competent authorities concerned fail to reach an agreement that eliminates double taxation, they shall set up an independent advisory commission charged with delivering its opinion on the elimination of the double taxation in question. Such opinion is binding for the competent authorities.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Belgium has an advance pricing agreement (APA) programme. It provides taxpayers with advance certainty on transfer pricing matters to avoid future disputes with the tax authorities.

Unilateral APAs are issued by the Service for Advance Decisions (the "Ruling Commission"), which is an autonomous section of the tax authorities. APAs focus on the arm's length character of intercompany prices based on functions, risks and assets used.

Bilateral or multilateral APAs are handled by the International Relations Department of the tax authorities, which co-ordinates the APA requests with the other relevant jurisdictions. The legal base for the application of bilateral and multilateral APAs is (generally) Article 25 of Belgium's tax treaties.

9.2 Other Mechanisms

In order to obtain tax certainty in relation to international tax matters, taxpayers can obtain an advance tax ruling from the Ruling Commission. The scope of advance tax rulings is very broad, covering a wide range of federal tax matters (eg, qualification of income, restructurings). Such rulings are binding decisions on the tax authorities and are generally valid for a maximum period of five years.

BRAZIL



Law and Practice

Contributed by:
Paulo Honório de Castro Júnior and Bruno Marques Feitosa
William Freire - Advogados Associados

Contents

1. Sources and Principles p.59
1.1 Domestic Sources of International Tax Law p.59
1.2 Hierarchy of Sources p.59
1.3 OECD Model/United Nations Influence on Treaty Practice p.60
1.4 Multilateral Instrument p.60

2. Territoriality, Residence and Permanent Establishment p.60
2.1 General Principle of Territorial Taxation p.60
2.2 Tax Residence of Individuals p.61
2.3 Taxation of Resident Individuals p.61
2.4 Taxation of Non-Resident Individuals p.61
2.5 Tax Residence of Legal Entities p.61
2.6 Definition of Permanent Establishment p.62

3. Taxation of Cross-Border Income p.62
3.1 Income From Immovable Property p.62
3.2 Business Profits p.63
3.3 Passive Income p.63
3.4 Capital Gains p.63
3.5 Employment Income p.64
3.6 Other Income p.64

4. OECD/G20 Global Tax Reform p.64
4.1 Pillar One – Amount B p.64
4.2 Pillar One – Amount A p.65
4.3 Pillar Two p.65
4.4 Specific Features or Deviations of Pillar Two p.65
4.5 Digital Services Tax p.65

5. Anti-Avoidance and Anti-Evasion Measures p.66
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.66
5.2 Anti-Avoidance Mechanisms p.66
5.3 Blacklists and Non-Cooperative Jurisdictions p.67
5.4 Reporting Obligations and Disclosure Regimes p.68
5.5 Role of Tax Authorities and Enforcement Measures p.68

6. Penalties and Sanctions p.69
6.1 Tax Penalties p.69
6.2 Criminal Penalties p.70
6.3 Interaction Between Tax and Criminal Procedures p.70

7. Administrative Co-Operation p.70
7.1 Legal Framework for Administrative Co-Operation p.70
7.2 Exchange of Information Clauses in Tax Agreements p.71
7.3 Other Forms of International Tax Collaboration p.71

8. Mutual Agreement Procedures and Arbitration p.71
8.1 Availability and Legal Basis p.71
8.2 Application Deadlines p.71
8.3 Mandatory Binding Arbitration p.72

9. Dispute Prevention p.72
9.1 Advance Pricing Agreements p.72
9.2 Other Mechanisms p.72

William Freire - Advogados Associados has a tax department that is renowned for its expertise in the mining, steel-making, agribusiness and energy sectors, offering comprehensive tax services and agile responses to client demands. Led by Paulo Honório, alongside Rodrigo Pires and Bruno Feitosa, the tax consultancy department provides a wide range of services, including tax planning, asset restructuring, investment structuring, tax review and legal opinions. Paulo Honório, a recognised expert in the field, prepares legal opinions for significant cases in the mineral, infrastructure, energy and agribusiness sectors. In tax litigation, the firm has a strong presence before CARF (Federal Administrative Court) and ANM (in cases involving mining royalties), handling disputes with expertise and diligence. Its key work areas include international tax planning for foreign investors, advisory on tax effects arising from M&A operations in Brazil and handling relevant tax disputes before administrative and judicial courts.

Authors



Paulo Honório de Castro Júnior is a senior partner at William Freire Advogados, responsible for structuring the firm's tax law department. He has a Master's in Economic, Financial and Tax Law from São Paulo University (USP) and in Tax Law from Federal University of Minas Gerais (UFMG). Paulo is the President of the Minas Gerais Institute of Tax Law (IMDT), and is a professor of tax law at PUC Minas and CEDIN.



Bruno Marques Feitosa is the partner in charge of tax consultancy at William Freire Advogados. He has ten years of experience at KPMG, including an international assignment in Thailand. Bruno is a professor of tax law at CEDIN.

William Freire - Advogados Associados

SCN-Q2,
Block A, 5th floor
70712-900
Brasilia
Brazil

Tel: + 55 31 3261 7747
Email: william@williamfreire.com.br
Web: www.williamfreire.com.br

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Brazil's international tax law is grounded in its Federal Constitution, which allocates taxing powers among the Union, states, municipalities and the federal district, and establishes fundamental principles such as legality, equality, ability to pay and legal certainty.

Only the Federal Union has competence to enter into international treaties and to legislate on income taxation, which centralises Brazil's treaty policy at the federal level.

The National Tax Code (*Código Tributário Nacional* – CTN) provides general rules applicable to all taxes, including provisions governing the interpretation of tax law and the interaction between domestic law and treaties. Federal statutes regulate core international tax matters, including transfer pricing, controlled foreign companies (CFCs), thin capitalisation and withholding taxation on cross-border payments.

Administrative guidance is issued primarily by the Federal Revenue Service (*Receita Federal do Brasil* – RFB) through normative instructions, rulings and binding consultation responses. While not legislation, such guidance plays a significant role in shaping compliance and audit practice.

Judicial Interpretation

Brazil does not follow a strict system of binding precedent, but decisions of the Superior Court of Justice (*Superior Tribunal de Justiça* – STJ) and the Supreme Federal Court (*Supremo Tribunal Federal* –STF) strongly influence tax interpretation. The STJ is particularly relevant in treaty matters, including the interpretation of permanent establishment (PE) clauses and the compatibility of CFC rules with treaty provisions. Decisions rendered under the "repetitive appeals" or "general repercussion" systems have binding effects on lower courts and administrative authorities.

Administrative case law issued by the Administrative Council of Tax Appeals (*Conselho Administrativo de Recursos Fiscais* – CARF) also plays a practical role in interpreting international tax rules, especially in transfer pricing and cross-border structuring disputes.

Treaty Network: Scope and Structure

Brazil maintains 37 income tax treaties currently in force. The network is geographically diversified, covering Europe, Latin America, Asia and the Middle East. A treaty with the United Kingdom has been signed and ratified by the UK but is pending approval by the Brazilian Congress.

Brazil's treaties generally follow a bilateral structure based on the OECD Model, while incorporating elements of the UN Model that preserve broader source-state taxation. Most treaties cover income and capital, include provisions on residence, PE, withholding tax limitations and mutual agreement procedures (MAPs), and increasingly reflect base erosion and profit shifting (BEPS) minimum standards.

Brazil has signed the Multilateral Instrument (MLI) but has not yet completed ratification, so treaty modifications remain dependent on bilateral processes.

1.2 Hierarchy of Sources

In Brazil, the relationship between domestic and international sources of tax law is governed by constitutional principles and statutory rules, particularly the CTN.

International tax treaties are incorporated into domestic law following congressional approval and presidential ratification. Once internalised by decree, they become part of the Brazilian legal system. Pursuant to Article 98 of the CTN, treaties prevail over conflicting domestic tax legislation and must be observed by subsequent laws. Courts interpret this not as a formal repeal of domestic provisions, but as a suspension of their effects to the extent they conflict with treaty obligations. The Superior Court of Justice has consistently upheld this approach in tax matters.

Treaties, however, remain hierarchically subordinate to the Federal Constitution. They cannot override constitutional provisions, including rules allocating taxing powers among federal, state and municipal authorities.

In hierarchical terms, the framework may be summarised as follows:

- the Federal Constitution;
- duly incorporated international treaties;
- complementary and ordinary tax laws; and
- below them, administrative regulations and guidance.

Administrative acts issued by the RFB must comply with treaty provisions, and domestic anti-avoidance or interpretative rules must be applied consistently with Brazil's international obligations.

1.3 OECD Model/United Nations Influence on Treaty Practice

Brazil's treaty practice reflects a hybrid approach. Its agreements generally follow the structure of the OECD Model Convention, particularly in relation to residence, PE and methods for eliminating double taxation. However, Brazil consistently incorporates elements of the UN Model in order to preserve broader source-based taxing rights.

A defining feature of Brazil's treaty policy is the emphasis on taxation at source. Many treaties expand the definition of royalties to include technical services and technical assistance, even in the absence of technology transfer. In practice, this allows Brazil to impose withholding tax on payments that, under the OECD Model, would often fall within business profits and be taxable only in the absence of a PE.

Older treaties relied more heavily on simplified wording and fewer anti-abuse provisions. More recent agreements – such as those signed with Switzerland and Singapore – demonstrate closer alignment with OECD/BEPS minimum standards, including enhanced dispute resolution mechanisms and anti-treaty shopping provisions.

Overall, Brazil does not adhere strictly to either model. Instead, it adopts a pragmatic approach: an OECD-based structure combined with UN-style source taxation, reflecting its long-standing policy of protecting taxing rights over inbound payments.

1.4 Multilateral Instrument

Brazil signed the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 20 October 2025. However, the instrument has not yet been ratified by the National Congress and, therefore, has not entered into force for Brazil. Under the Brazilian constitutional system, international treaties require congressional approval followed by presidential ratification before producing legal effects domestically.

Upon ratification, the MLI will modify Brazil's covered tax treaties in accordance with the reservations and notifications submitted. Brazil has provisionally accepted the principal purpose test (PPT) as the general anti-abuse rule and indicated openness to the simplified limitation on benefits (LOB) clause in certain cases.

Until ratification occurs, Brazil's treaty network continues to operate solely under the terms of each bilateral agreement, including those recently negotiated to incorporate BEPS-related standards through direct renegotiation rather than multilateral modification.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Brazil adopts a mixed system combining worldwide taxation for residents with source-based taxation for non-residents.

Residents – including companies incorporated in Brazil and individuals considered tax resident – are taxed on their worldwide income. This includes foreign business profits, capital gains and investment income. In the case of corporations, foreign profits may be taxed on an accrual basis under CFC rules. Non-residents are taxed only on Brazilian-source income. Taxation generally occurs through withholding at source, particularly on dividends, interest, royalties, services and capital gains from Brazilian assets.

The concept of Brazilian-source income is broadly interpreted. Income is usually deemed sourced in Brazil when:

• the payer is located in Brazil;
• the asset is situated in Brazil; or
• the economic activity is performed in Brazil.

Brazilian domestic law does not provide a detailed statutory definition of "permanent establishment". In practice, taxation of foreign entities operating in Brazil is often based on the broader concept of "doing business" in Brazil. When a branch is formally authorised, it is taxed as a local entity on profits attributable to its Brazilian operations.

There are no special overseas territories or separate regional tax systems within Brazil. The country operates as a federative republic, but international income taxation (income tax and social contribution on net profits) is exclusively federal.

2.2 Tax Residence of Individuals

Under Brazilian tax law, a legal entity is treated as resident when it is incorporated in Brazil or when its administrative headquarters are located in Brazilian territory. This concept is linked to the idea of "tax domicile" (*domicílio tributário*) set out in the CTN, which establishes the jurisdictional connection between the entity and the Brazilian tax authorities.

2.3 Taxation of Resident Individuals

Resident individuals are taxed in Brazil on a worldwide basis. Once classified as tax resident, an individual is subject to Brazilian income tax on income earned in Brazil and abroad, regardless of where it is paid or received.

Employment income, business income, rental income and other ordinary income are subject to progressive rates ranging from 7.5% to 27.5%. Certain capital gains are taxed separately at progressive rates between 15% and 22.5%, depending on the amount of the gain. Foreign-source income is generally taxed in Brazil when received or made available. Income earned abroad must be reported in the annual individual income tax return, even if already taxed in another country.

To mitigate double taxation, Brazil grants a foreign tax credit for income taxes effectively paid abroad, limited to the Brazilian tax due on the same income (this is ensured by international treaties or by reciprocal treatment with countries such as the United States, the United Kingdom and Germany). There is no general exemption for foreign income. In addition, Brazil does not provide a remittance-based regime or preferential system for non-domiciled residents.

Certain types of income may benefit from specific exemptions under domestic law, such as dividends received from Brazilian companies or gains within statutory thresholds. However, as a general rule, resident individuals are fully taxable on their global income under the progressive personal income tax system.

2.4 Taxation of Non-Resident Individuals

Individuals who are not tax resident in Brazil are taxed exclusively on Brazilian-source income. They are not subject to taxation on worldwide income.

Brazilian-source income is generally taxed through withholding at source. The applicable rate depends on the nature of the income and the residence of the recipient. In most cases, taxation is definitive at source, meaning the non-resident is not required to file an annual tax return in Brazil.

Applicable double tax treaties may reduce withholding rates or allocate taxing rights differently, depending on the income category and treaty provisions.

2.5 Tax Residence of Legal Entities

Under Brazilian law, a company is considered tax resident in Brazil when it is incorporated under Brazilian law or when its head office (effective headquarters) is located in Brazil. In practice, incorporation under Brazilian corporate law is the primary criterion.

Brazilian subsidiaries – such as limited liability companies (*sociedades limitadas* – LTDA) or corporations/joint-stock companies (*sociedades anônimas* – SA) – are therefore always treated as Brazilian tax residents and are taxed on a worldwide income basis.

A branch of a foreign company requires prior governmental authorisation to operate in Brazil. Although it must register locally and comply with Brazilian accounting and tax rules, it does not constitute a new

Brazilian legal entity. It remains the same foreign legal person operating through a local establishment. For tax purposes, however, the branch is subject to Brazilian corporate income taxation on profits attributable to its Brazilian activities, similarly to a PE.

Accordingly, residence is determined primarily by place of incorporation or head office location, while branches are taxed in Brazil based on local presence rather than incorporation.

2.6 Definition of Permanent Establishment

Brazilian domestic tax legislation does not contain a comprehensive statutory definition of "permanent establishment" equivalent to that found in the OECD Model. Instead, domestic law relies on the broader concept of a foreign entity "doing business" in Brazil. In practice, tax authorities assess whether a non-resident maintains a fixed place of business, a dependent agent with powers to bind the enterprise or a de facto business unit operating on a permanent basis in Brazil.

Certain provisions of the income tax regulations refer to branches, agencies or representatives acting on behalf of foreign companies. A Brazilian agent with authority to conclude contracts in the name of a foreign enterprise may trigger local taxation, even if no formally incorporated branch exists. However, the absence of a clear statutory PE concept means that domestic law analysis is often fact-driven and may differ from treaty standards.

By contrast, Brazil's tax treaties generally adopt a PE definition broadly aligned with Article 5 of the OECD Model, including fixed place of business and dependent agent tests. Nevertheless, Brazilian treaties tend to preserve broader source taxing rights and often follow a hybrid OECD/UN approach. For example, they frequently include service PE clauses or shorter-duration thresholds for construction sites, reflecting UN Model influence.

More recent treaties align more closely with OECD standards, including BEPS-related updates, but deviations remain in areas such as services and source-based taxation.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Taxation of Residents

Individuals and companies resident in Brazil are taxed on a worldwide basis. Rental income derived from immovable property located in Brazil is included in the taxpayer's taxable income and subject to the applicable progressive individual income tax rates (for individuals) or to corporate income tax (*imposto de renda da pessoa jurídic* – IRPJ) and social contribution on net profits (*contribuição social sobre o lucro líquido* – CSLL) for legal entities.

Capital gains realised on the disposal of Brazilian real estate are also taxable. For individuals, gains are subject to progressive rates ranging from 15% to 22.5%, depending on the amount of the gain. For companies, gains are generally included in the corporate tax base and taxed at the standard combined rate of 34%, unless a simplified regime applies.

Certain limited reliefs may apply, such as exemptions for the sale of a primary residence under specific conditions or roll-over relief when the proceeds are reinvested in residential property within a statutory period.

Taxation of Non-Residents

Non-resident individuals and entities are taxed only on Brazilian-source income. Rental income from property located in Brazil is subject to withholding income tax at a flat rate of 15%, increased to 25% if the beneficiary is resident in a low-tax jurisdiction.

Capital gains realised by non-residents on the sale of Brazilian immovable property are subject to withholding tax on the gain at progressive rates from 15% to 22.5% (or 25% for low-tax jurisdictions). The Brazilian purchaser, or a local legal representative, is responsible for withholding and remitting the tax. In addition, the transfer of title triggers municipal real estate transfer tax (*imposto sobre transmissão de bens imóveis* – ITBI), typically borne by the purchaser. Tax treaties generally preserve Brazil's right to tax income and gains derived from immovable property located in its territory.

3.2 Business Profits

Business profits earned in Brazil are subject to IRPJ and CSLL. The standard combined rate is 34% (25% IRPJ, including a surtax, and 9% CSLL). Higher rates apply to certain financial institutions.

Brazilian resident companies are taxed on their worldwide income. Non-resident entities are taxed only on profits attributable to activities carried out in Brazil, whether through a locally incorporated entity or a PE.

Tax Base and Regimes

Under the actual profit method (*lucro real*), taxable income is based on accounting profit adjusted by statutory additions and exclusions. Tax losses may be carried forward indefinitely, but may offset only up to 30% of taxable income per year.

Smaller companies may opt for the presumed profit method (*lucro presumido*), under which taxable income is calculated by applying fixed statutory margins to gross revenues. In this regime, actual expenses are generally not relevant for determining the income tax base.

Cross-Border Aspects

In treaty situations, business profits of a foreign enterprise are generally taxable in Brazil only if attributable to a PE located in the country. In the absence of a PE, Brazil typically relies on withholding taxation on specific categories of payments, such as services or royalties, subject to domestic law and treaty provisions.

3.3 Passive Income

Passive Income

Brazil taxes passive income under a combination of withholding rules and corporate income taxation, with treaty relief available in many cases.

Dividends

As from 1 January 2026, dividends paid by Brazilian companies are subject to withholding income tax at 10%, including when paid to resident individuals and non-residents. Tax treaties may reduce the rate applicable to non-residents where a lower ceiling is provided.

Interest

Interest paid to non-residents is generally subject to 15% withholding tax, increased to 25% if the recipient is resident in a low-tax jurisdiction or subject to a privileged regime. Certain exemptions apply (eg, specific foreign bond issuances and infrastructure bonds). Treaty reductions may apply.

Interest on Net Equity (Juros sobre Capital Próprio – JCP)

JCP remains deductible for the paying company within statutory limits. The withholding tax rate was increased to 17.5% from 2026 onwards (previously 15%), or 25% for low-tax jurisdictions. Treaty relief may apply where compatible with the treaty wording.

Royalties

Royalties paid abroad are generally subject to 15% withholding tax, or 25% for low-tax jurisdictions. Most Brazilian treaties allow source taxation and may reduce the rate (often to 10–15%).

In addition to income tax, cross-border payments for royalties and certain services may trigger the Contribution for Intervention in the Economic Domain (*Contribuição de Intervenção no Domínio Econômico* – CIDE) (10%), Social Integration Programme Contribution (*Programa de Integração Social* – PIS)/ Contribution for the Financing of Social Security (*Contribuição para o Financiamento da Seguridade Social* – Cofins-Import) and tax on financial operations (*imposto sobre operações financeiras* – IOF-FX) at the level of the Brazilian payer.

3.4 Capital Gains

Capital Gains

Brazil does not apply a separate capital gains tax for corporations. The taxation depends on whether the seller is resident or non-resident and on the applicable income tax regime.

Resident Individuals

Capital gains realised by resident individuals are subject to progressive rates ranging from 15% to 22.5%, depending on the amount of the gain. The gain corresponds to the positive difference between the sale price and the acquisition cost. Limited exemptions apply, such as small-value transactions and the sale

of a primary residence under specific reinvestment conditions.

Resident Companies

For companies under the actual profit regime, capital gains are included in the ordinary corporate income tax base and taxed at the combined 34% rate (IRPJ and CSLL). Losses are generally classified as non-operational and may offset non-operational gains, subject to the 30% limitation on tax loss utilisation per period.

Under the presumed profit regime, capital gains are added to the taxable base and effectively taxed at ordinary rates, while capital losses are not deductible.

Non-Residents

Capital gains realised by non-residents on Brazilian assets are subject to withholding tax at progressive rates from 15% to 22.5%, or 25% if the seller is resident in a low-tax jurisdiction. The Brazilian purchaser or legal representative is responsible for withholding and remitting the tax.

Tax treaties may limit or eliminate Brazilian taxation in specific situations, particularly where exclusive taxing rights are allocated to the seller's country of residence.

3.5 Employment Income

Employment Income

Employment income earned by individuals resident in Brazil is subject to progressive personal income tax at rates ranging from 0% to 27.5%. Employers are required to withhold tax at source on a monthly basis under the payroll withholding system. Residents are taxed on their worldwide employment income, including remuneration paid abroad.

Non-Residents and Short-Term Assignments

Non-resident individuals are taxed only on Brazilian-source employment income, generally at a flat rate of 25%, withheld at source.

Brazilian domestic law does not provide a specific short-term presence exemption. However, under applicable tax treaties, employment income may be exempt in Brazil where:

- the individual remains in Brazil for no more than 183 days within the relevant period;
- remuneration is paid by a foreign employer; and
- the cost is not borne by a Brazilian PE.

In practice, treaty protection is essential for short-term assignments.

Cross-Border and Remote Working

Brazil has not enacted specific tax rules addressing remote working. For individuals, tax residence remains the decisive factor. A foreign employee physically working in Brazil may trigger Brazilian-source taxation regardless of where the employer is located.

For corporations, remote working may create risks of a PE if activities in Brazil are conducted on a fixed or habitual basis and go beyond preparatory or auxiliary functions. The analysis remains fact-specific and grounded in traditional PE principles rather than in specific digital or remote work legislation.

3.6 Other Income

There are no additional types of income not listed previously that are subject to special taxation rules in Brazil.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Brazil has not implemented Amount B in its domestic transfer pricing legislation. Although Brazil aligned its transfer pricing system with the OECD arm's length standard as from 2024, it did not incorporate the simplified and streamlined approach for baseline marketing and distribution activities (Amount B) into its internal rules.

At the international level, Brazil has participated in discussions within the OECD/G20 Inclusive Framework and has expressed political support for the development of Amount B. However, as of early 2026, there is no specific domestic legislation, regulation or administrative guidance providing for its application.

4.2 Pillar One – Amount A

Brazil supports Pillar One at the political level but has not implemented Amount A domestically. As a member of the Inclusive Framework, Brazil endorsed the October 2021 Statement on the Two-Pillar Solution and participates in the ongoing negotiations concerning the Multilateral Convention. As a large market jurisdiction, Brazil is, in principle, aligned with the policy objective of reallocating a portion of residual profits of highly profitable multinational enterprises to market jurisdictions, even in the absence of physical presence.

However, no domestic legislation or administrative guidance has been enacted to implement Amount A. Its application in Brazil remains contingent upon the conclusion and ratification of the Multilateral Convention. Public debate reflects a cautious approach, with attention to complexity, revenue impacts, legal certainty and dispute resolution.

In practice, Brazil has prioritised the implementation of Pillar Two, while maintaining a supportive but reserved position regarding the operationalisation of Amount A.

4.3 Pillar Two

Brazil has implemented the global minimum tax (QDMTT) under Pillar Two through Provisional Measure No 1,262/2024, subsequently converted into Law No 15,079/2024. The legislation introduces a qualified domestic minimum top-up tax aligned with the OECD Global Anti-Base Erosion (GloBE) framework.

The regime applies to multinational enterprise groups with consolidated annual revenues of at least EUR750 million in at least two of the four preceding fiscal years. It is effective for fiscal years beginning on or after 1 January 2025.

Brazil's implementation focuses on the adoption of a domestic minimum top-up tax designed to ensure a 15% effective taxation threshold within its jurisdiction, in line with the Pillar Two architecture.

4.4 Specific Features or Deviations of Pillar Two

Brazil's global minimum tax, enacted by Law No 15,079/2024 (following Provisional Measure No 1,262/2024) and regulated by Normative Instruction RFB No 2,228/2024, was drafted to closely adhere to the GloBE Model Rules. The regime introduces a QDMTT applicable to multinational enterprise groups with consolidated annual revenues of at least EUR750 million.

A notable structural distinction is that Brazil has not implemented the Income Inclusion Rule (IIR) or the Undertaxed Profits Rule (UTPR). The Brazilian framework is limited to a domestic top-up tax designed to ensure that constituent entities located in Brazil are subject to a minimum effective tax rate of 15%. In this respect, Brazil adopted a QDMTT-only approach rather than the full Pillar Two architecture.

Substantively, the computational structure largely mirrors the OECD Model Rules. However, the practical interpretation of several concepts requires careful alignment with Brazilian tax and accounting practices. This is particularly relevant for matters such as the characterisation of qualified refundable tax credits, the treatment of deferred taxes, currency conversion rules and the interaction with existing corporate income tax and CSLL mechanisms. Brazil's regime is embedded in its domestic legal framework – notably through an additional CSLL charge – and therefore must be applied in light of established Brazilian fiscal concepts and administrative practices.

Accordingly, while Brazil's implementation is broadly consistent with the OECD framework at a structural level, certain interpretative and operational aspects may differ in practice due to the specific features of Brazil's tax system.

4.5 Digital Services Tax

Brazil has not implemented a standalone digital services tax (DST). Instead, the country taxes the digital economy through the adaptation of its existing consumption tax framework and specific sectoral levies.

Currently, streaming services and software licensing are classified as services subject to the municipal service tax (*imposto sobre serviços de qualquer natureza* – ISS), with rates varying between 2% and 5%. Additionally, audiovisual streaming platforms are now subject to the contribution for the development of

the national film industry (*contribuição para o desenvolvimento da indústria cinematográfica nacional* – CONDECINE), a federal contribution of up to 3% of gross revenue dedicated to the national film industry. Transactions involving non-resident providers also trigger withholding taxes, such as withholding income tax (*imposto de renda retido na fonte* – IRRF) (15%) and CIDE-Remittance (10%).

The system is currently undergoing a major transition due to the 2023 Constitutional Reform. Starting in 2026, Brazil will implement a dual VAT system consisting of a subnational tax on goods and services (*imposto sobre bens e serviços* –IBS) and the Federal Contribution on Goods and Services (*Contribuição sobre Bens e Serviços* – CBS). This new framework explicitly adopts the destination principle, ensuring that all digital products and services are taxed at the point of consumption. Furthermore, the Brazilian Supreme Court has recently clarified the legal landscape by ruling that digital goods and software are subject to service taxes (*imposto sobre serviços de qualquer natureza* – ISS) rather than state merchandise taxes (*imposto sobre circulação de mercadorias e serviços* – ICMS), providing greater legal certainty for international providers operating in the jurisdiction.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Brazilian law distinguishes lawful tax planning from unlawful conduct based on the legality, timing and substance of the taxpayer's acts. The differentiation is grounded primarily in the CTN and in criminal tax legislation.

Tax evasion (*evasão fiscal*) generally refers to unlawful conduct aimed at suppressing or reducing tax liability after the taxable event has occurred. It involves violation of a legal duty and typically includes omission of revenue, concealment of transactions or falsification of documentation.

Tax fraud (*fraude*) entails deliberate and deceptive conduct intended to mislead the tax authorities. Criminal liability may arise under Law No 8,137/1990, which typifies crimes against the tax system. Fraud is characterised by intentional misrepresentation, false bookkeeping or the use of fictitious operations designed to conceal taxable income.

Simulation and Disregard of Legal Acts

Brazilian law also recognises the concept of simulation (*simulação*), whereby a legal act is structured to conceal the true nature of a transaction. Article 116, sole paragraph, of the CTN authorises the tax authorities to disregard acts or transactions carried out with the purpose of disguising the occurrence of the taxable event or its essential elements. Although this provision has not been formally regulated, its constitutionality has been upheld by the STF.

Administrative and judicial practice has increasingly relied on substantive analysis of transactions. Indicators of abusive arrangements, particularly in cross-border contexts, include:

- artificial interposition of entities lacking operational substance;
- circular financial flows;
- use of low-tax jurisdictions without economic rationale;
- recharacterisation of financing instruments; and
- treaty shopping structures without a genuine business purpose.

While Brazilian law does not codify a comprehensive business purpose test, tax authorities and administrative courts frequently examine the economic substance and legal validity of transactions. Legitimate tax planning remains permissible, provided the structure is legally effective and supported by non-tax commercial justification.

5.2 Anti-Avoidance Mechanisms

Brazil relies primarily on statutory anti-evasion provisions rather than a fully regulated general anti-avoidance rule. The CTN authorises the tax authorities to disregard simulated or fraudulent acts designed to conceal the taxable event or misrepresent its legal elements.

In practice, tax audits apply a substance-over-form approach. Transactions lacking economic rationale or business purpose may be recharacterised. Administrative courts increasingly examine economic substances, particularly in cross-border restructurings, intercompany financing and treaty-based structures.

Transfer Pricing and Thin Capitalisation

Brazil's transfer pricing regime, recently aligned with the arm's-length principle, requires related-party transactions to reflect market conditions. The tax authorities may make primary adjustments and impose penalties where pricing deviates from comparables.

Thin capitalisation rules restrict the deductibility of interest paid to foreign related parties, applying fixed debt-to-equity ratios. Payments exceeding statutory thresholds are non-deductible, and enhanced scrutiny applies to transactions involving low-tax or privileged tax regimes.

Controlled Foreign Company Rules

Brazil operates strict CFC rules. Profits of controlled foreign entities must be included annually in the Brazilian parent's taxable base, regardless of distribution. This mechanism limits deferral strategies and addresses profit shifting to low-tax jurisdictions.

Withholding Taxes and Blacklist Regimes

Cross-border payments to jurisdictions classified as low-tax or underprivileged regimes are subject to aggravated withholding tax rates and stricter deductibility requirements. Taxpayers must demonstrate the identity of the beneficial owner and the operational capacity of the foreign entity.

Exchange of Information and Reporting

Brazil participates in the automatic exchange of financial information under the Common Reporting Standard (CRS) and implements country-by-country reporting for large multinational groups. These transparency tools support risk assessment and detection of base erosion strategies.

Penalties and Criminal Enforcement

Non-compliance may result in significant administrative penalties, including fines of 75% of unpaid tax, increased to 100% in cases of fraud. Criminal prosecution may also apply under tax crime legislation, particularly where wilful misconduct or falsification is established.

5.3 Blacklists and Non-Cooperative Jurisdictions

List of Low-Tax and Privileged Jurisdictions

Brazil maintains two distinct lists for tax purposes:

- low-tax jurisdictions (commonly referred to as "blacklisted jurisdictions"), defined as countries or dependencies that (i) do not tax income or (ii) apply a maximum income tax rate below 17%; and
- privileged tax regimes, which refer not to entire jurisdictions but to specific legal entities or regimes that benefit from harmful preferential tax treatment.

Both lists are issued and periodically updated by the RFB.

Tax Consequences

Transactions involving entities located in such jurisdictions are subject to stricter tax treatment. The main consequences include:

- increased withholding tax – payments of interest, royalties and certain service fees are subject to a 25% withholding income tax rate (instead of the standard 15%);
- application of transfer pricing rules: transfer pricing rules apply regardless of whether the counterparty is related;
- stricter thin capitalisation limits – a reduced 0.3:1 debt-to-equity ratio applies to loans granted by or guaranteed by entities in these jurisdictions; and
- deductibility restrictions – expenses paid to such entities may be disallowed unless the taxpayer demonstrates the identity of the ultimate beneficial owner and the operational substance of the foreign entity.

Additional Compliance Requirements

Brazilian taxpayers must provide enhanced documentation to substantiate the economic substance and legitimacy of transactions involving blacklisted or privileged regimes. Failure to do so may result in denial of deductions, tax reassessments and aggravated penalties.

These measures form part of Brazil's broader anti-avoidance framework aimed at discouraging profit shifting to low-tax environments.

5.4 Reporting Obligations and Disclosure Regimes

General Reporting Framework

Brazil imposes extensive reporting and book-keeping obligations designed to enable the tax authorities to identify fraud, evasion and aggressive tax planning. The system is highly digitalised and operates through integrated electronic filings submitted to the RFB, as well as to state and municipal authorities.

Corporate Tax Reporting

Companies subject to the actual profit method must file the Tax Accounting Ledger Filing (*Escrituração Contábil Fiscal* – ECF) annually. The ECF contains detailed accounting data, tax adjustments, transfer pricing information and country-by-country reporting data (where applicable).

Multinational groups meeting the revenue threshold must also submit country-by-country reports (CbCRs), allowing the RFB to assess profit allocation and risk indicators across jurisdictions.

Transaction and Accounting Reporting

Brazilian entities must maintain and transmit electronic accounting records under the Public Digital Bookkeeping System (*Sistema Público de Escrituração Digital* – SPED). This includes:

- electronic accounting books;
- digital VAT-type tax records (ICMS/IPI, PIS/Cofins, IBS and CBS); and
- electronic invoices (*nota fiscal eletrônica* – NF-e), which allow real-time cross-checking of transactions.

These systems enable automated data matching and anomaly detection.

Financial and Cross-Border Reporting

Additional obligations include:

- registration of foreign investments and intercompany loans with the Central Bank;
- reporting of foreign assets by residents – Declaration of Brazilian capital held abroad (*Declaração de Capitais Brasileiros no Exterior* – CBE); and
- identification of ultimate beneficial owners in corporate registries.

Financial institutions must comply with the CRS, enabling automatic exchange of financial account information with other jurisdictions.

Absence of Mandatory Disclosure Regime

Brazil does not currently operate a mandatory disclosure regime for aggressive tax arrangements similar to BEPS Action 12 or Directive on Administrative Cooperation 6 (DAC6). However, the breadth of digital reporting and cross-border transparency mechanisms provides the tax authorities with significant tools to detect abusive structures.

5.5 Role of Tax Authorities and Enforcement Measures

Brazilian tax authorities are vested with broad investigative powers to verify compliance and detect tax fraud, grounded in the Constitution and the CTN. These powers must observe due process and proportionality, but they allow extensive access to taxpayer information.

Access to Books and Records

Tax authorities may:

- examine accounting books, tax records and supporting documentation;
- require electronic files and digital bookkeeping systems (SPED); and
- request contracts, invoices and bank documentation relevant to tax liabilities.

Taxpayers are legally required to maintain proper accounting records and make them available upon request.

Audits and Inspections

Tax audits may be initiated without prior judicial authorisation. Authorities may conduct on-site inspections at business premises during regular working hours to verify operations and documentation.

Although visits are generally preceded by formal notice of audit commencement, unannounced inspections may occur where justified by risk indicators or suspected irregularities.

Access to Financial Information

The RFB may obtain bank and financial data directly from financial institutions without a prior court order, pursuant to Complementary Law No 105/2001, as upheld by the STF. This power is widely used in fraud investigations.

Search and Seizure (Perquisitions Fiscale)

Tax authorities themselves do not have autonomous criminal search powers. Forced entry, seizure of assets or criminal raids require judicial authorisation and are typically conducted in co-ordination with the Public Prosecutor's Office and the federal police in cases involving suspected tax crimes.

Exchange of Information

Brazil participates in automatic exchange of financial information under the CRS, enabling cross-border investigations of concealed assets and income. Overall, the Brazilian system combines extensive administrative audit powers with judicial oversight for coercive or criminal investigative measures.

6. Penalties and Sanctions

6.1 Tax Penalties

Penalties related to cross-border transactions are governed by a combination of tax, customs, foreign exchange and criminal legislation.

At the tax level, the CTN establishes general principles on tax liability, infractions and sanctions. Specific penalties are provided in federal statutes regulating income tax, transfer pricing, CFC rules, withholding obligations and reporting duties.

Customs violations are governed by customs legislation and the Customs Regulation, while foreign exchange infractions fall under Central Bank regulations. In cases involving fraud, concealment or intentional evasion, criminal sanctions may apply under Law No 8,137/1990 (crimes against the tax system) and related statutes.

Administrative Penalties

The most common sanctions in cross-border matters include:

- fines for underpayment of tax (generally 75% of the unpaid amount);
- aggravated fines (typically 100%) in cases of fraud, simulation or wilful misconduct;
- isolated fines for non-compliance with ancillary obligations (eg, transfer pricing documentation, CbCR, foreign asset reporting);
- disallowance of deductions (eg, interest or royalties paid abroad); and
- customs penalties, including fines and forfeiture of goods.

Interest (Special System for Settlement and Custody;*Sistema Especial de Liquidação e de Custódia* (SELIC) rate) accrues on unpaid amounts.

Criminal Liability

Where cross-border structures involve intentional tax evasion, misrepresentation or sham transactions, criminal prosecution may be initiated. Criminal liability generally depends on definitive tax assessment.

Competent Authorities

These are as follows:

- the RFB is responsible for assessing and imposing federal tax penalties;
- the Administrative Council of Tax Appeals (*Conselho Administrativo de Recursos Fiscais* – CARF) reviews federal tax disputes;
- the Central Bank supervises foreign exchange compliance;
- customs authorities oversee import/export infractions; and
- the Public Prosecutor's Office and criminal courts handle tax crimes.

Enforcement may involve administrative collection procedures and, ultimately, judicial tax execution proceedings.

6.2 Criminal Penalties

Tax fraud and tax evasion are criminal offences under Brazilian law, primarily regulated by Law No 8,137/1990, which governs crimes against the tax system. Criminal liability arises where there is intentional conduct (*dolo*) aimed at suppressing or reducing tax through fraud, concealment, falsification of documents or omission of information.

Main Criminal Offences

The most common offences include:

- suppressing or reducing tax by omitting information or providing false statements to tax authorities;
- inserting false elements in invoices or accounting records;
- falsifying or altering tax documents; and
- using fraudulent schemes to conceal taxable events.

Failure to collect or remit tax withheld from third parties may also constitute a criminal offence, depending on the circumstances.

Penalties

The standard penalty for tax fraud or evasion is:

- imprisonment from two to five years, and
- a criminal fine.

If the offence involves social security contributions, similar penalties apply under specific provisions.

Additional crimes, such as money laundering, criminal conspiracy or document forgery, may lead to cumulative penalties.

6.3 Interaction Between Tax and Criminal Procedures

Brazil requires a mandatory referral mechanism – the Tax Report for Criminal Purposes (*Representação Fiscal para Fins Penais*). Under Article 83 of Law No 9,430/1996, tax auditors must report evidence of fraud or tax evasion to the Public Prosecutor's Office once a final administrative decision is rendered. Coordination is governed by binding jurisprudence of the STF (Binding Precedent No 24).

Criminal prosecution for material tax offences may only commence after administrative proceedings are exhausted, and the tax debt is definitively confirmed. Once the tax liability is final and remains unpaid, the tax authority transmits the evidentiary file to the public prosecutor, who has exclusive competence to institute criminal proceedings. A pivotal feature of this interaction is the extinction of criminal liability by payment: if the taxpayer settles the confirmed debt in full at any time, the criminal case is dismissed. This framework prioritises administrative recovery of revenue while reserving criminal prosecution as a last resort.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Administrative co-operation in tax matters in Brazil is primarily based on multilateral conventions, bilateral treaties and domestic legislation that authorises the exchange of information and mutual assistance.

At the multilateral level, Brazil is a party to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which provides the legal basis for exchange of information on request, spontaneous exchange, automatic exchange of information and assistance in tax collection. Brazil also participates in the CRS framework for the automatic exchange of financial account information and has committed to the country-by-country reporting minimum standard under the OECD/G20 BEPS Project.

At the bilateral level, Brazil's double taxation treaties generally contain provisions based on Article 26 of the OECD Model Convention, allowing for exchange of information between competent authorities. In addition, Brazil has entered into specific tax information exchange agreements (TIEAs) with certain jurisdictions.

Domestically, the exchange of information is implemented through legislation and regulations issued by the RFB, which acts as the competent authority. Brazilian law authorises the tax administration to collect, process and share tax information in accordance

with applicable treaties and international agreements, subject to confidentiality safeguards.

Accordingly, Brazil's framework for administrative co-operation combines MLIs, an expanding treaty network and domestic regulatory provisions enabling the practical operation of information exchange mechanisms.

7.2 Exchange of Information Clauses in Tax Agreements

Brazil actively exchanges tax information through automatic, spontaneous and on-request mechanisms.

Automatic exchange takes place primarily under the CRS, through which Brazil exchanges financial account information with participating jurisdictions. Brazil also implements the country-by-country reporting framework for large multinational enterprise groups, allowing the automatic exchange of CbCRs with treaty partners. In addition, exchanges may occur under intergovernmental agreements relating to the Foreign Account Tax Compliance Act (FATCA).

On-request exchange is carried out pursuant to Brazil's double taxation treaties and the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The RFB, acting as the competent authority, may both request and provide information relevant to the administration and enforcement of tax laws.

Spontaneous exchange is likewise permitted under applicable treaties and the Multilateral Convention, allowing Brazil to transmit information to partner jurisdictions where it considers such information may be relevant to their tax administration.

7.3 Other Forms of International Tax Collaboration

As a signatory to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Brazil may engage in simultaneous tax examinations and other co-ordinated administrative actions with partner jurisdictions. Domestic law authorises the Federal Revenue Service (*Receita Federal do Brasil*) to conduct such co-operative procedures where provided for in applicable treaties.

Brazil is not currently listed as a participating jurisdiction in the OECD's International Compliance Assurance Programme (ICAP). While joint or simultaneous audits are legally possible, their practical use remains limited and case-specific rather than institutionalised.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Brazil has an established MAP programme. The legal basis for MAP is primarily found in Brazil's double taxation treaties, which generally follow Article 25 of the OECD Model Convention. These provisions allow taxpayers to request assistance from the competent authority where they consider that actions of one or both contracting states result in taxation not in accordance with the treaty.

At the domestic level, MAP procedures are regulated by administrative rules issued by the RFB, which acts as the Brazilian competent authority. The current procedural framework is set out in Normative Instruction RFB No 1,846/2018 (as amended), which governs the submission, admissibility, processing and interaction between MAP and domestic administrative or judicial proceedings.

Brazil is also a signatory to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which complements treaty-based co-operation but does not replace the MAP provisions contained in bilateral tax treaties.

8.2 Application Deadlines

In Brazil, the deadline to submit a MAP request is determined by the applicable tax treaty. Most of Brazil's double taxation treaties follow Article 25 (1) of the OECD Model Convention and provide that the taxpayer must present the case to the competent authority within three years from the first notification of the action resulting in taxation not in accordance with the treaty. The starting point is generally the date on which the taxpayer becomes aware – or should reasonably have become aware – of the contested taxation (for example, the date of a tax assessment notice).

Normative Instruction RFB No 1,846/2018 (as amended), which regulates MAP procedures domestically, confirms that the request must comply with the deadline established in the relevant treaty.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is not generally available in Brazil. Brazil's double taxation treaties historically do not include arbitration clauses comparable to Article 25 (5) of the OECD Model Convention. As a result, unresolved MAP cases are not automatically subject to binding arbitration if the competent authorities fail to reach agreement.

Brazil has also not signed or ratified the MLI, which in some jurisdictions introduces mandatory binding arbitration into covered tax treaties.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Brazil has not yet fully operationalised its advance pricing agreement (APA) programme, although the legal framework authorising APAs was introduced by Law No 14,596/2023 and regulated at a general level by Normative Instruction RFB No 2,161/2023. These instruments, which aligned Brazil's transfer pricing system with the OECD arm's length principle as from January 2024, formally permit the conclusion of APAs.

However, the specific procedural rules governing the submission, analysis and negotiation of APAs are still pending final regulation. In August 2024, the RFB launched a public consultation on draft APA regulations, with comments accepted until 15 October 2024. The final rules are expected to be issued, with implementation targeted for January 2025.

The programme is expected to allow unilateral APAs, primarily providing legal certainty vis-à-vis the Brazilian tax authorities. Bilateral or multilateral APAs will depend on the willingness and engagement of treaty partners and the use of MAP mechanisms. As currently designed, eligibility is conditioned upon prior enrolment in a *Receita Federal* co-operative compliance or collaboration programme.

Accordingly, while Brazil has established the statutory basis for APAs within its OECD-aligned transfer pricing regime, the programme remains in the process of full regulatory implementation.

9.2 Other Mechanisms

In addition to MAP and the forthcoming APA programme, Brazil offers limited mechanisms to obtain tax certainty in international tax matters.

The primary formal instrument is the advance tax ruling (*consulta fiscal*), regulated under federal tax procedure rules. Taxpayers may submit a binding consultation to the RFB regarding the interpretation of tax legislation in a specific factual context. If the request is properly formulated, and the facts are fully disclosed, the ruling is binding on the tax authorities with respect to the applicant provided the factual assumptions remain accurate. However, rulings address legal interpretation and do not involve negotiated outcomes.

Brazil has also developed co-operative compliance initiatives aimed at fostering transparency and dialogue with large taxpayers. Participation in such programmes may facilitate more direct interaction with the tax administration and is expected to be relevant for access to instruments such as unilateral APAs. These initiatives, however, do not constitute formal safe harbours or binding advance agreements in themselves.

Accordingly, while Brazil provides ruling procedures and emerging co-operative compliance frameworks, mechanisms for advance, negotiated certainty in international tax matters remain comparatively recent and are still evolving.

BULGARIA



Law and Practice

Contributed by:
Todor Banchev Todorov and Victoriya Grishina
Banchev and Grishina Law Firm

Contents

1. Sources and Principles p.75
1.1 Domestic Sources of International Tax Law p.75
1.2 Hierarchy of Sources p.75
1.3 OECD Model/United Nations Influence on Treaty Practice p.75
1.4 Multilateral Instrument p.75

2. Territoriality, Residence and Permanent Establishment p.76
2.1 General Principle of Territorial Taxation p.76
2.2 Tax Residence of Individuals p.76
2.3 Taxation of Resident Individuals p.76
2.4 Taxation of Non-Resident Individuals p.76
2.5 Tax Residence of Legal Entities p.76
2.6 Definition of Permanent Establishment p.76

3. Taxation of Cross-Border Income p.76
3.1 Income From Immovable Property p.76
3.2 Business Profits p.77
3.3 Passive Income p.77
3.4 Capital Gains p.77
3.5 Employment Income p.77
3.6 Other Income p.78

4. OECD/G20 Global Tax Reform p.78
4.1 Pillar One – Amount B p.78
4.2 Pillar One – Amount A p.78
4.3 Pillar Two p.78
4.4 Specific Features or Deviations of Pillar Two p.78
4.5 Digital Services Tax p.78

5. Anti-Avoidance and Anti-Evasion Measures p.79
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.79
5.2 Anti-Avoidance Mechanisms p.79
5.3 Blacklists and Non-Cooperative Jurisdictions p.79
5.4 Reporting Obligations and Disclosure Regimes p.79
5.5 Role of Tax Authorities and Enforcement Measures p.80

6. Penalties and Sanctions p.80
6.1 Tax Penalties p.80
6.2 Criminal Penalties p.80
6.3 Interaction Between Tax and Criminal Procedures p.81

7. Administrative Co-Operation p.81
7.1 Legal Framework for Administrative Co-Operation p.81
7.2 Exchange of Information Clauses in Tax Agreements p.81
7.3 Other Forms of International Tax Collaboration p.81

8. Mutual Agreement Procedures and Arbitration p.81
8.1 Availability and Legal Basis p.81
8.2 Application Deadlines p.82
8.3 Mandatory Binding Arbitration p.82

9. Dispute Prevention p.82
9.1 Advance Pricing Agreements p.82
9.2 Other Mechanisms p.82

Banchev and Grishina Law Firm is a newly established tax and customs boutique firm founded by two partners with extensive experience gained in leading law firms and international advisory practices. Operating on a partner-led model, Banchev and Grishina ensures direct senior involvement in every mandate, combining strategic oversight with hands-on execution. The practice focuses on complex tax and customs advisory and procedural representation, including withholding tax, reverse charge and invoicing issues, bad debt relief, VAT implications on wasted goods and fiscal control over goods subject to high fiscal risk. The team provides assistance during tax audit procedures initiated by the Bulgarian tax authorities and represents clients before administrative bodies and tax and customs officials. The partners are particularly active in litigation, representing clients in tax and commercial disputes before all court instances, positioning the firm as a trusted adviser in high-stakes and sensitive contentious matters.

Authors



Todor Banchev Todorov is a Band 1 tax practitioner, ranked by Chambers and Partners for 12 consecutive years. He brings extensive experience from senior roles as a partner in one of the largest law firms in Bulgaria and as a senior manager in a Big Four advisory practice. He advises major international companies on complex corporate structuring, tax analysis and strategic reorganisations, and represents clients in high-stakes tax and administrative disputes before national courts and EU institutions, including the Court of Justice of the European Union. He combines transactional tax expertise with strong contentious capability.



Victoriya Grishina is an attorney-at-law and tax and legal adviser with over 13 years of professional experience. She focuses on regulatory and tax procedures, comprehensive legal and tax risk analysis and dispute resolution. Her practice includes advising on complex restructuring matters, including insolvency proceedings, as well as representing clients in commercial and tax litigation. She combines strong technical expertise with practical experience in managing sensitive disputes and regulatory exposure, supporting clients through contentious and high-risk business situations.

Banchev and Grishina Law Firm

7-9 Balkan Street
Building B, Office 5
1303 Sofia
Bulgaria

Tel: +359 898 554979
Email: viktoriya@banchevgrishina.eu
todor@banchevgrishina.eu

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main international tax law sources in Bulgaria are the Double Tax Treaties (DTTs) and other international treaties, EU law, OECD rules and domestic tax legislation. Under the Constitution, ratified international treaties prevail over conflicting domestic law. EU law plays a significant role, particularly through anti-avoidance, transparency and minimum tax directives, as well as through the directives in the field of VAT and other directives such as The EU Interest and Royalties Directive (Council Directive 2003/49/EC) of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States and Parent-Subsidiary Directive (Council Directive 2011/96/EU) of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, which have been transposed into Bulgarian legislation. Domestic tax rules are primarily set out in the Corporate Income Tax Act, the Personal Income Tax Act and the Value Added Tax Act, with procedural matters governed by the Tax and Social Security Procedure Code.

Administrative practice of the National Revenue Agency in the form of Rulings provides interpretative guidance that, while not legally binding, is influential in practice.

Bulgaria has an extensive DTT network of over 70 double tax treaties, based on the OECD Model Tax Convention, covering all EU Member States and key global trading partners. Bulgaria is a party to the OECD Multilateral Instrument (MLI), which has modified part of its treaty network to incorporate BEPS minimum standards.

Bulgaria also follows the OECD Guidelines in the field of transfer pricing, reflected in Special Ordinances – acts formally placed below the laws in the hierarchy of State acts but with significant practical effect.

1.2 Hierarchy of Sources

Under the Bulgarian Constitution, ratified and promulgated international treaties take precedence over conflicting domestic legislation, which ensures the direct applicability of double tax treaties in the domestic legal order. Anyway, in practice, the double tax treaties are usually applied when there is a conflict between the legislations of the contracting parties – for example, both countries are taxing the same income or both countries are treating the same person as resident.

The EU Regulations have supremacy over national law within their scope of application with direct effect. The Bulgarian tax legislation is also influenced by the transposed directives.

In practice, Bulgarian tax authorities and courts are interpreting domestic legislation in conformity with Bulgaria's international and EU commitments.

The Bulgarian Constitution has supremacy over all other acts, including those at the international and EU levels, but its provisions are quite general and it is unlikely to conflict with any international tax rules.

1.3 OECD Model/United Nations Influence on Treaty Practice

Bulgarian double tax treaties are based on the OECD Model Tax Convention. The OECD Model is generally followed in respect of the allocation of taxing rights, permanent establishment rules and the treatment of business profits. The OECD Model, although not a formal legislative act, is widely used for the interpretation of disputable aspects, based on the practice of the Supreme Administrative Court treating it as a source used in the course of negotiation of an international agreement. More recent treaties and treaty updates have incorporated BEPS-related provisions, including principal purpose test clauses, either through bilateral renegotiation or via the OECD Multilateral Instrument (MLI).

1.4 Multilateral Instrument

Bulgaria is a signatory to the OECD Multilateral Instrument (MLI) and has ratified it, with the MLI in force for Bulgaria since 1st July 2023. The MLI modifies a significant portion of Bulgaria's double tax treaty network by introducing BEPS minimum standards, including treaty anti-abuse rules and improved dispute resolution mechanisms.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Bulgaria applies a mixed territorial and residence-based principle of taxation. Resident individuals and legal entities are subject to tax on their worldwide income, while non-residents are taxed only on Bulgarian-source income, as defined by domestic law (including the transposed EU directives) and applicable tax treaties. Bulgarian tax legislation does not provide for special tax regimes or territorial particularities within the country, as the tax system applies uniformly across the entire territory. Some incentives and tax reliefs are provided for investments in regions with high unemployment. In cross-border situations, the territorial scope of taxation is further limited by double tax treaties and EU law, which may restrict source taxation rights or allocate taxing powers to another jurisdiction.

2.2 Tax Residence of Individuals

An individual is considered a tax resident in Bulgaria when they:

- have a permanent address in Bulgaria;
- stay in the country for more than 183 days in any 12-month period; or
- have a centre of vital interests located in Bulgaria.

Where an individual qualifies as a tax resident in more than one jurisdiction, double tax treaties provide tie-breaker rules, typically based on permanent home, centre of vital interests, habitual abode and nationality, in line with the OECD Model Tax Convention.

2.3 Taxation of Resident Individuals

Individuals who are tax residents in Bulgaria are taxed on their worldwide income, irrespective of the source. Bulgarian personal income tax is generally levied at a flat rate of 10%, with certain categories of income subject to final withholding taxes. The income from dividends is taxed at 5% personal income tax. Specific statutory exemptions and reliefs exist for certain types of income, such as some social benefits and limited categories of capital income, but these are narrowly defined and strictly applied. For income derived from certain specifically listed professions or occupations, the taxable base may be reduced by a legislatively fixed percentage.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals are taxed in Bulgaria only on income sourced within the country, as defined by domestic tax law and limited by applicable double tax treaties. Bulgarian-source income typically includes employment income from labour performed in Bulgaria, income from real estate located in Bulgaria and certain categories of passive income. Passive income paid to non-resident individuals (such as dividends, interest and royalties) is generally subject to withholding tax, unless reduced or exempt under an applicable tax treaty or EU law. In practice, the taxation of non-residents is largely effected through final withholding mechanisms, with limited filing obligations where tax is withheld at source. Relief from double taxation is available through the application of double tax treaties.

2.5 Tax Residence of Legal Entities

A legal entity is considered a tax resident in Bulgaria if it is incorporated under the Bulgarian law. In cases of dual residence, double tax treaties provide tie-breaker rules in line with the OECD Model Tax Convention.

2.6 Definition of Permanent Establishment

Bulgarian domestic tax law defines a permanent establishment (PE) broadly as a fixed place of business through which a non-resident carries out all or part of its business activities in Bulgaria. This includes places such as branches, offices, factories, workshops, or construction sites that exceed a statutory duration threshold, as well as certain forms of dependent-agent activity or continuous activity of signing agreements in Bulgaria. Where a double tax treaty applies, the treaty definition of PE prevails over domestic law. Bulgaria's tax treaties are generally aligned with the OECD Model Tax Convention, including in respect of construction sites and agency PE concepts.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Income from immovable property located in Bulgaria is taxable in Bulgaria, irrespective of whether the

recipient is a resident or non-resident. This includes income from rental, leasing or other forms of exploitation of real estate. For resident individuals and entities, such income is included in their worldwide taxable income and is taxed under the applicable income tax rules. Non-residents are taxed on Bulgarian-source real estate income, typically through withholding tax or filing obligations, depending on the nature of the income and the applicable tax regime. Double tax treaties generally preserve source-state taxing rights over income from immovable property.

3.2 Business Profits

Business profits realised by Bulgarian tax resident entities are subject to corporate income tax at a flat rate of 10% on worldwide income. Profits are determined based on accounting results, adjusted for tax purposes in accordance with the Corporate Income Tax Act.

Non-resident entities are taxable in Bulgaria only on Bulgarian-source business profits, typically where such profits are attributable to a permanent establishment in Bulgaria. In line with the double tax treaties, business profits are taxable exclusively in the state of residence unless a permanent establishment exists in Bulgaria, in which case profits attributable to that PE are subject to Bulgarian corporate income tax.

According to the practice of the Bulgarian tax authorities, the income at source of foreign residents that does not fall explicitly within the scope of certain special treaty provisions is generally treated as business profit.

3.3 Passive Income

Passive income (such as dividends, interest and royalties) is generally subject to withholding tax under Bulgarian domestic law when paid by a Bulgarian source to non-residents. The standard withholding tax rate is 5% for dividends and 10% for interest and royalties, subject to specific statutory exemptions. EU law exemptions apply in certain cases, including under the EU Parent–Subsidiary Directive and the Interest and Royalties Directive, provided the requirements are met. Withholding tax, if not eliminated at the EU level, may be reduced or eliminated under applicable double tax treaties, typically subject to conditions on beneficial ownership and other treaty requirements. In addition, the above provisions regarding tax reliefs are not applicable in cases of hidden distribution of profit.

3.4 Capital Gains

Capital gains of Bulgarian tax resident individuals and entities are generally taxable in Bulgaria as part of their worldwide income. For corporate taxpayers, capital gains are included in taxable profit and are subject to a 10% corporate income tax. Non-residents are taxed on capital gains from the disposal of Bulgarian-source assets, including immovable property located in Bulgaria and shares in Bulgarian companies, subject to limitations under applicable double tax treaties. In practice, treaties often allocate taxing rights over gains on immovable property to the source state, while gains on shares may be exempt in Bulgaria unless the value is derived principally from Bulgarian real estate.

3.5 Employment Income

Under Bulgarian legislation, employment income is taxable in Bulgaria if the work is performed within the country, irrespective of the employer's place of residence. For Bulgarian tax residents, such income is included in their worldwide taxable income and is generally taxed at a flat personal income tax rate of 10%, in addition to mandatory social security contributions.

For non-resident employees, Bulgarian-source employment income is taxable where the work is physically performed in Bulgaria, subject to short-term assignment exemptions under applicable double tax treaties, typically based on the 183-day rule and conditions relating to the employer and cost-bearing entity.

Bulgarian tax legislation does not contain specific rules on remote working. In practice, remote work performed from Bulgaria may create tax residence risks for individuals, especially in light of the current OECD interpretation and, in certain cases, permanent establishment or payroll obligations for foreign employers, depending on the factual circumstances and duration of the activity.

3.6 Other Income

In addition to the main income categories, Bulgarian tax law provides specific taxation rules for certain types of income that are not expressly addressed in the OECD Model Convention. This includes, in particular:

- income from prizes and awards;
- income from games of chance; and
- certain one-off or ancillary income streams, which may be subject to taxation.

Bulgarian law also applies special regimes for income from agriculture and forestry, as well as simplified taxation mechanisms for sole traders and small-scale activities, which deviate from the standard profit-based taxation approach. These rules are primarily driven by domestic policy considerations and operate independently of treaty-based income classification.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Bulgaria has not adopted specific legislation implementing Amount B of Pillar One and has not formally introduced a domestic simplified transfer pricing safe harbour for baseline marketing and distribution activities, although some provisions have a similar practical effect. At this stage, the Bulgarian tax authorities continue to apply the general arm's length principle under domestic transfer pricing rules and applicable tax treaties. Any future implementation of Amount B is expected to closely follow the OECD framework, without material local deviations, but no formal legislative or administrative steps have been announced to date.

4.2 Pillar One – Amount A

Bulgaria supports Pillar One Amount A as part of the broader OECD/G20 Inclusive Framework, which aims to reallocate taxing rights in the digitalised economy. However, Amount A has not been implemented into Bulgarian domestic law, as its application depends on the entry into force of a multilateral convention at the international level. In line with the position of most EU Member States, Bulgaria's approach remains conditional and coordinated, pending sufficient international consensus and legal certainty regarding scope, administration and dispute resolution. Until such time, the taxation of highly digitalised and consumer-facing businesses continues to be governed by existing treaties and domestic tax rules.

4.3 Pillar Two

Bulgaria has implemented the global minimum tax under Pillar Two through the transposition of Directive (EU) 2022/2523, with effect from 1st January 2024. The rules apply to multinational and large domestic groups with consolidated annual revenue of at least EUR 750 million. The Bulgarian regime operates primarily through a qualified domestic minimum top-up tax, ensuring that profits attributable to Bulgaria are taxed at an effective minimum rate of 15%, notwithstanding the country's standard 10% corporate income tax rate.

4.4 Specific Features or Deviations of Pillar Two

Bulgarian implementation of the global minimum tax closely follows the OECD Pillar Two framework, as transposed through Directive (EU) 2022/2523, and does not introduce material domestic deviations. The rules align with the OECD Model Rules in terms of scope, effective tax rate calculation, and top-up tax mechanisms. Any differences are limited to technical and administrative aspects required by EU harmonisation, rather than substantive policy departures. As a result, in-scope groups can generally rely on OECD-compliant Pillar Two analyses when assessing their Bulgarian tax position.

4.5 Digital Services Tax

Bulgaria has not introduced a specific tax on digital products or digital services, such as a digital services tax or a streaming services tax. The taxation of digital activities is therefore governed by general corporate income tax and VAT rules, as well as withholding tax requirements, applicable directives (most notably the Interest and Royalty Directive), and double tax treaties. In line with the common EU approach, Bulgaria has refrained from adopting unilateral digital taxes, pending multilateral solutions at the OECD and EU levels, including the ongoing discussions around Pillar One.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Bulgarian law clearly distinguishes between tax fraud, tax evasion and tax avoidance, each subject to different legal consequences. Tax fraud and tax evasion involve intentional acts or omissions aimed at unlawfully reducing or eliminating tax liabilities, such as:

- the use of false documentation;
- concealment of income; or
- participation in fraudulent VAT schemes.

Those are subject to administrative penalties and criminal liability.

Tax avoidance, by contrast, refers to arrangements that formally comply with the law but are designed to obtain an undue tax advantage. Bulgarian tax law incorporates a general anti-avoidance rule (GAAR), allowing the tax authorities to disregard artificial or non-genuine arrangements lacking valid commercial substance, particularly in cross-border contexts. Indicators of abusive arrangements include the absence of economic rationale, circular transactions, disproportionate tax benefits and structures that do not reflect economic reality, in line with EU and OECD principles.

5.2 Anti-Avoidance Mechanisms

Bulgaria has implemented a multi-layered framework to combat tax fraud, tax evasion and tax avoidance, combining substantive tax rules, procedural powers and enhanced reporting obligations. Key mechanisms include a general anti-avoidance rule (GAAR), specific anti-avoidance provisions under the Corporate Income Tax Act, and extensive transfer pricing documentation requirements aligned with OECD standards. Apart from that, the Criminal Code provides criminal liability for significant breaches of the tax and financial systems, including submitting false declarations, inaccurate financial results and others. Criminal sanctions also apply in cases of serious tax fraud, particularly in relation to VAT carousel and organised fraud schemes, while administrative penalties and interest apply in cases of non-compliance, hidden distribution of profit or abusive tax planning.

The National Revenue Agency and the courts are also practising denial of VAT credit on the basis of a statement for participation in a tax avoidance scheme, following the case law of the Court of Justice of the European Union.

On the enforcement side, the National Revenue Agency has broad audit and investigation powers at its disposal, including:

- real-time access to accounting data;
- fiscal control measures for high-risk goods; and
- enhanced information-gathering tools.

Bulgaria has also implemented EU and OECD transparency regimes, including:

- the DAC framework;
- automatic exchange of information; and
- mandatory disclosure rules for cross-border arrangements.

5.3 Blacklists and Non-Cooperative Jurisdictions

Bulgaria maintains a domestic list of non-cooperative jurisdictions for tax purposes, which largely mirrors the EU list and is updated periodically. The list is used as a reference point for applying enhanced anti-avoidance and anti-evasion measures. Transactions involving entities located in listed jurisdictions are subject to stricter tax treatment, including:

- limitations on tax deductibility of expenses;
- heightened transfer pricing scrutiny; and
- increased withholding tax exposure.

In addition, such transactions may trigger enhanced reporting and documentation requirements, as well as a higher likelihood of tax audits by the Bulgarian tax authorities.

5.4 Reporting Obligations and Disclosure Regimes

Bulgaria has implemented a range of reporting and transparency obligations to detect and prevent tax

fraud, tax evasion and tax avoidance. These include country-by-country reporting (CbCR) for large multinational groups, transfer pricing documentation requirements, and mandatory disclosure rules (DAC 6) for certain cross-border arrangements.

Additional obligations include:

- SAF-T electronic reporting, phased in from 2026;
- enhanced VAT reporting;
- real-time control measures; and
- extensive information exchange mechanisms under the EU and OECD frameworks.

Together, these measures significantly increase the tax authorities' data availability and audit capabilities, particularly for cross-border and high-risk transactions.

A special measure under the internal legislation concerns the hidden distribution of profit, according to which the voluntary disclosure of hidden distribution of profit in the corporate tax declaration eliminates the sanction provided for such omissions. This is a deviation from the general approach of the national legislation, as, in principle, voluntary tax disclosure is not a judicially regulated measure.

5.5 Role of Tax Authorities and Enforcement Measures

The Bulgarian tax authorities, primarily the National Revenue Agency, are vested with extensive investigatory powers to detect and investigate tax fraud. These include the authority to access accounting records and electronic data, request information from taxpayers and third parties, and conduct tax audits and inspections. The NRA may conduct on-site inspections, including unannounced visits, and impose interim measures, such as the seizure of documents, goods or electronic devices, where there is a risk that evidence will be destroyed or concealed. In cases involving serious tax fraud, particularly VAT fraud, the authorities may initiate tax searches and co-ordinate with law enforcement bodies, subject to procedural safeguards and, where required, judicial oversight.

The tax authorities have a broad range of powers connected with the control of the transport of goods of high fiscal risk, including forfeiture in favour of the State, the right to request financial securities, the sealing of truck loads, and others.

The tax raids are also a familiar practice of the tax authorities, conducted in some cases together with authorities from other regulatory institutions. Depending on the search, these could be representatives of Customs, Police, Food Safety Agency, Commission for Consumer Protection, Commission on Protection of Competition and others.

6. Penalties and Sanctions

6.1 Tax Penalties

Penalties for cross-border transactions in Bulgaria are primarily governed by the Tax and Social Security Procedure Code, the Corporate Income Tax Act, the Value Added Tax Act, and related secondary legislation. The framework provides for administrative sanctions in cases of non-compliance, late reporting, incorrect tax treatment or failure to meet transfer pricing and disclosure obligations. The National Revenue Agency is the principal authority responsible for imposing and enforcing tax penalties, including fines, sanctions and interest. In cases involving serious tax fraud or criminal offences, enforcement may involve the prosecution authorities and criminal courts, while judicial review of administrative sanctions is carried out by the regional courts as the first court of instance and the administrative courts as the cassation instance.

6.2 Criminal Penalties

Tax fraud and tax evasion in Bulgaria may give rise to criminal liability under the Criminal Code, where the offence involves intentional acts aimed at avoiding or reducing tax liabilities above statutory thresholds. Criminal offences typically include the use of false documentation, concealment of taxable income or participation in organised VAT fraud schemes. Sanctions may include imprisonment, criminal fines and the confiscation of assets, with penalties increasing where the offence involves particularly large amounts, repeated conduct or organised criminal activity. Criminal proceedings are conducted by the prosecution authorities, with cases adjudicated by the criminal

courts, alongside parallel administrative tax enforcement where applicable.

6.3 Interaction Between Tax and Criminal Procedures

Coordination between the National Revenue Agency and the prosecution authorities is ensured through formal notification procedures, information sharing and, in complex cases, joint or parallel investigative actions. While administrative and criminal tax proceedings are legally distinct, they may run in parallel, subject to procedural safeguards and judicial oversight.

Bulgarian law provides for suspending the tax proceedings and referring the materials to the relevant prosecutor when, during the proceedings, information on a crime of significance to the outcome is established. Disclosure of tax and social security information can be granted by the courts upon a request of the prosecutor, the investigating police officer or the investigator in connection with criminal proceedings.

On the other hand, if in the course of criminal proceedings evidence is collected that is relevant for establishing tax obligations, the police authorities, the prosecutor or the investigators are obliged to provide the revenue authorities with access to this evidence and certified copies thereof.

In the litigation process of appealing tax audit acts, although not criminal proceedings, the prosecutor is entitled to participate.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Administrative co-operation in tax matters in Bulgaria is primarily based on EU law, multilateral conventions and bilateral treaties. At the EU level, Bulgaria applies the Directive on Administrative Cooperation (DAC) framework, which provides for automatic, spontaneous and on-request exchange of information, joint audits and other forms of cooperation between Member States. At the international level, Bulgaria is a party to the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, enabling broad information exchange and assistance in tax collection with both EU and non-EU jurisdictions. These instruments are complemented by bilateral tax treaties, which typically include exchange of information provisions aligned with OECD standards.

7.2 Exchange of Information Clauses in Tax Agreements

Bulgaria participates in automatic, spontaneous and on-request exchange of information for tax purposes. Automatic exchange is carried out primarily under the EU DAC framework and the OECD Common Reporting Standard, covering financial account information, tax rulings and other prescribed categories. Spontaneous and on-request exchanges are conducted under EU law, the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters and bilateral tax treaties, enabling the Bulgarian tax authorities to obtain and provide information relevant to cross-border tax enforcement and compliance.

7.3 Other Forms of International Tax Collaboration

Bulgaria participates in multilateral administrative co-operation mechanisms beyond traditional mutual agreement procedures. In particular, the Bulgarian tax authorities may engage in joint and simultaneous tax audits with other EU Member States under the Directive on Administrative Cooperation (DAC) framework. While Bulgaria has not formally announced participation as a lead authority in the OECD International Compliance Assurance Programme, it may be involved indirectly or on a case-by-case basis through information exchange and coordinated audit actions with other participating jurisdictions.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Bulgaria has an established mutual agreement procedure (MAP) framework available to taxpayers. The legal bases for MAP include bilateral tax treaties, the EU Arbitration Convention (for transfer pricing and permanent establishment disputes within the EU) and the EU Tax Dispute Resolution Directive, which provides binding dispute resolution mechanisms.

8.2 Application Deadlines

In Bulgaria, a request for a mutual agreement procedure (MAP) must generally be submitted within three years from the first notification of the action resulting in taxation not in accordance with the applicable tax treaty, in line with the OECD Model Tax Convention and the provisions of most Bulgarian double tax treaties. For disputes falling within the scope of the EU Tax Dispute Resolution Directive, the same three-year deadline applies, calculated from the receipt of the first formal notice of the disputed tax measure.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is available in Bulgaria primarily within the EU context. It applies under the EU Arbitration Convention (for transfer pricing and permanent establishment disputes) and the EU Tax Dispute Resolution Directive, where arbitration may be initiated if the mutual agreement procedure does not resolve the dispute within the prescribed timeframe.

Outside the EU framework, mandatory binding arbitration is not generally available. Bulgaria has not adopted a broad arbitration mechanism under its bilateral tax treaties and has not opted into mandatory arbitration under the OECD Multilateral Instrument (MLI). As a result, arbitration in non-EU cases depends on the specific provisions of the relevant tax treaty and remains relatively limited in practice.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Bulgaria does not have a formal advance pricing agreement (APA) programme established under domestic law. As a result, taxpayers cannot obtain binding unilateral, bilateral or multilateral APAs from the Bulgarian tax authorities.

Some tax certainty may instead be sought through informal pre-filing discussions, general interpretative guidance of the National Revenue Agency, or through mutual agreement procedures (MAP) under applicable tax treaties, particularly in cross-border transfer pricing disputes.

9.2 Other Mechanisms

Bulgaria does not operate a formal co-operative compliance or enhanced engagement programme for international tax matters. However, taxpayers may seek individual written tax rulings or interpretative opinions from the National Revenue Agency, which, while not generally binding on third parties, provide practical guidance and a degree of comfort if the facts are fully and accurately disclosed. In cross-border contexts, additional certainty may be achieved through mutual agreement procedures (MAP) under applicable tax treaties and EU dispute resolution mechanisms. In practice, tax certainty in Bulgaria remains largely ex post, achieved through audits and litigation rather than advance clearance mechanisms.

Trends and Developments

Contributed by:
Todor Banchev Todorov and Victoriya Grishina
Banchev and Grishina Law Firm

Banchev and Grishina Law Firm is a newly established tax and customs boutique firm founded by two partners with extensive experience gained in leading law firms and international advisory practices. Operating on a partner-led model, Banchev and Grishina ensures direct senior involvement in every mandate, combining strategic oversight with hands-on execution. The practice focuses on complex tax and customs advisory and procedural representation, including withholding tax, reverse charge and invoicing issues, bad debt relief, VAT implications on wasted goods and fiscal control over goods subject to high fiscal risk. The team provides assistance during tax audit procedures initiated by the Bulgarian tax authorities and represents clients before administrative bodies and tax and customs officials. The partners are particularly active in litigation, representing clients in tax and commercial disputes before all court instances, positioning the firm as a trusted adviser in high-stakes and sensitive contentious matters.

Authors



Todor Banchev Todorov is a Band 1 tax practitioner, ranked by Chambers and Partners for 12 consecutive years. He brings extensive experience from senior roles as a partner in one of the largest law firms in Bulgaria and as a senior manager in a Big Four advisory practice. He advises major international companies on complex corporate structuring, tax analysis and strategic reorganisations, and represents clients in high-stakes tax and administrative disputes before national courts and EU institutions, including the Court of Justice of the European Union. He combines transactional tax expertise with strong contentious capability.



Victoriya Grishina is an attorney-at-law and tax and legal adviser with over 13 years of professional experience. She focuses on regulatory and tax procedures, comprehensive legal and tax risk analysis and dispute resolution. Her practice includes advising on complex restructuring matters, including insolvency proceedings, as well as representing clients in commercial and tax litigation. She combines strong technical expertise with practical experience in managing sensitive disputes and regulatory exposure, supporting clients through contentious and high-risk business situations.

Banchev and Grishina Law Firm

7-9 Balkan Street
Building B, Office 5
1303 Sofia
Bulgaria

Tel: +359 898 554979
Email: viktoriya@banchevgrishina.eu
todor@banchevgrishina.eu

Contributed by: Todor Banchev Todorov and Victoriya Grishina, **Banchev and Grishina Law Firm**

Introduction of the Euro as the Official Currency

The introduction of the euro as Bulgaria's official currency, effective 1st January 2026, constitutes one of the most consequential regulatory and economic developments in the jurisdiction in recent decades. Although the fixed conversion rate of BGN1.95583 per 1EUR remains unchanged, the practical implications extend far beyond the technical currency re-denomination. The transition creates a complex compliance and supervisory environment with direct consequences for tax reporting, settlement of public liabilities, pricing policies, contractual relationships and ongoing audit exposure.

From a tax perspective, the transition requires careful management of a dual-currency framework during the transitional phase. Tax returns, audit acts and administrative instruments relating to periods prior to 2026 will continue to be prepared in Bulgarian lev (BGN). However, any payments due after 1 January 2026 must be effected in euros, irrespective of the period to which the liability relates. This creates potential reconciliation challenges, particularly where reassessment acts, penalties or interest relate to prior fiscal years but become payable after euro adoption.

The governing framework, the Law on the Introduction of the Euro in the Republic of Bulgaria, extends well beyond consumer information requirements. It introduces enhanced supervisory and sanctioning powers, including the designation of the National Revenue Agency (NRA) as one of the competent authorities for enforcement. As a result, euro-transition compliance is expected to become embedded within the broader architecture of tax checks.

A particularly sensitive element is the mandatory dual pricing period (8 August 2025 – 8 August 2026). During this period, all prices offered to end consumers must be displayed in both lev and euros. Any price increase must be objectively justified by economic factors, with the burden of proof resting on the trader. The sanctions regime is substantial and includes turnover-based fines for large enterprises, materially increasing financial exposure.

Non-compliance with the dual pricing requirements is subject to significant administrative sanctions. For legal entities, fines range from BGN5,000 to BGN100,000, and from BGN10,000 to BGN200,000 in cases of repeated infringement, taking into account the gravity, duration and consequences of the violation. For large enterprises with annual turnover exceeding BGN50 million in the preceding financial year, sanctions may reach up to 0.5% of annual turnover and up to 1% in the event of repeated infringement during the dual pricing period, capped at BGN1 million in all cases.

Certain categories of goods and services are expressly excluded from the dual pricing obligation, most notably petroleum products and natural gas, books and textbooks. In addition, invoices and related credit or debit notes fall outside the scope of the dual pricing requirements.

In practice, the euro transition intersects with broader themes of data transparency and enforcement intensity. Pricing data, accounting entries, and VAT treatment will be easier to cross-check within the evolving digital audit environment. For businesses, the transition is therefore not only a financial and operational project but also a regulatory risk exercise that requires coordinated review of accounting systems, configurations, contractual clauses, and internal documentation.

Against this background, advisory support extends beyond technical conversion. It encompasses regulatory risk assessment, documentation strategies to substantiate pricing adjustments, alignment between accounting and tax reporting during the dual-currency phase, and representation in administrative proceedings and disputes arising from enforcement measures linked to euro adoption.

Fiscal Control Regime for Goods with High Fiscal Risk

Bulgaria continues to expand and refine its fiscal control regime for goods deemed a high fiscal risk. The regime, regulated primarily under the Tax and Social Security Procedure Code, reflects sustained policy efforts to combat VAT fraud, undeclared trade and revenue leakage in sectors characterised by significant cash flows and cross-border movements.

The NRA possesses extensive powers to monitor, inspect and restrict the movement of high-risk goods. The scope, determined by statutory criteria and administrative lists, typically includes:

- fuels;
- alcohol and tobacco;
- agricultural products;
- foodstuffs;
- cars and car parts; and
- construction materials.

The classification remains dynamic, allowing adaptation to emerging risk patterns.

Control measures may be carried out at multiple stages of the supply chain, including import, intra-EU acquisition, transport, storage and subsequent sales. Part of the enforcement toolkit is formed of:

- real-time monitoring;
- roadside inspections; vehicle or premises sealing; and
- temporary detention of goods.

In practice, fiscal control could serve as a gateway to broader VAT audits. Discrepancies between transport documentation, accounting records and VAT declarations may trigger extended investigations. With SAF-T implementation, physical control data can be cross-referenced with digital accounting submissions, reinforcing integrated oversight.

For businesses operating in logistics-intensive sectors, robust internal controls, synchronised documentation and early audit readiness are indispensable. The regime underscores the authorities' preference for combining physical enforcement with digital analytics.

EU Special VAT Scheme for Small Enterprises

Effective 1 January 2026, Bulgaria introduced the EU Special VAT Scheme for Small Enterprises under Directive (EU) 2020/285. The regime reflects a broader EU objective of reducing compliance burdens for small businesses while facilitating cross-border economic activity within the internal market.

Eligible businesses with EU-wide turnover below EUR100,000 and domestic turnover below BGN100,000 (as national VAT exemption threshold) may apply a VAT exemption to domestic supplies and, subject to prior notification procedures, to certain intra-EU transactions without the need for multiple VAT registrations. The scheme introduces a simplified compliance environment and reduces administrative fragmentation for small operators engaging in cross-border trade.

However, the regime is not purely beneficial. Businesses applying the exemption are not entitled to deduct input VAT on related purchases. This creates structural considerations in sectors with higher input costs, capital expenditure or supply-chain integration. The choice to opt into the regime, therefore, requires a forward-looking assessment of cost structures, expected growth trajectories and margin sensitivity.

Further risk arises from turnover monitoring. Exceeding the applicable thresholds triggers mandatory exit and application of the standard VAT regime, including registration and charging obligations. Where growth is not carefully tracked, businesses may face retroactive exposure or disputes regarding the timing of threshold exceedance and transitional obligations.

Within the broader compliance landscape, the SME VAT Scheme interacts with SAF-T reporting and enhanced digital cross-checking mechanisms. Even exempt businesses remain subject to record-keeping obligations and data consistency requirements. As the NRA's capacity for automated review increases, discrepancies between turnover reporting, intra-EU notifications and accounting data may generate audit scrutiny.

Advisory engagement in this context typically involves:

- eligibility assessments;
- scenario modelling;
- cross-border notification procedures;
- internal monitoring frameworks; and
- preparation for potential disputes arising from threshold breaches or reclassification.

Introduction of SAF-T Reporting in Bulgaria

The adoption of a Standard Audit File for Tax (SAF-T) reporting regime marks a structural transformation in Bulgaria's tax control architecture. Introduced through amendments to the Tax and Social Security Procedure Code in March 2025 and with administrative ordinances, mandatory SAF-T reporting will apply from 2026 for large enterprises, with phased extension to other taxpayers through 2030.

SAF-T requires periodic submission of detailed, machine-readable accounting and transactional data. This includes granular information on sales and purchase invoices, payments, accounting entries and other operational data. The reform significantly expands the NRA's capacity for automated cross-checks, anomaly detection and real-time data analytics.

The shift from reactive, document-based audits to data-driven, pre-emptive control mechanisms alters the risk profile for taxpayers. Discrepancies between VAT declarations, accounting ledgers, transfer pricing documentation and logistics records can be identified more rapidly and systematically. The likelihood of earlier audit initiation and of formal reassessment procedures increases correspondingly.

Importantly, SAF-T does not operate in isolation. It forms part of an integrated compliance ecosystem that includes euro-transition oversight, fiscal control over high-risk goods and enhanced transfer pricing regulation. Data consistency across multiple regulatory layers becomes a central compliance imperative.

In this environment, audit defence strategies require earlier engagement. Proactive data reconciliation, internal control testing and scenario planning become critical to mitigating exposure. Procedural management during audits, including challenges to evidentiary standards and proportionality of information requests, will likely become more prominent as digital enforcement intensifies.

New Transfer Pricing Ordinance

A new Transfer Pricing Ordinance (Ordinance No H-3), superseding the 2006 framework and bringing national regulations in line with the most recent OECD Transfer Pricing Guidelines, has been enacted in Bulgaria since 1 January 2026. The reform represents a comprehensive methodological modernisation of the transfer pricing regime.

The Ordinance introduces structured rules for accurate delineation of controlled transactions, emphasising economic substance over contractual form. It formalises detailed functional and risk analysis and reinforces the requirement to apply the most appropriate transfer pricing method based on case-specific facts.

While the reform enhances clarity and alignment with international standards, it also increases audit scrutiny. The emphasis on substance and comparability analysis reduces tolerance for formalistic documentation unsupported by operational reality. The availability of SAF-T data further strengthens the NRA's capacity to test the consistency of accounting outcomes, intra-group pricing policies and VAT treatment.

Transfer pricing reviews are therefore likely to become more technically sophisticated and data-intensive. Inconsistencies between financial statements, VAT reporting and intercompany agreements may serve as entry points for broader reassessments.

Businesses engaged in cross-border transactions should reassess transfer pricing models, update documentation frameworks and ensure alignment between operational structures and pricing policies. From a dispute perspective, early preparation of robust comparability analyses and clear articulation of economic rationale become essential components of audit defence.

Implementation of the 15% Global Minimum Tax

As of 1 January 2024, Bulgaria has enacted the EU global minimum tax regime under Directive (EU) 2022/2523. This regime imposes a 15% minimum effective corporate tax rate on large multinational and domestic groups, regardless of Bulgaria's 10% statutory corporate income tax rate.

Applicable to groups with consolidated annual revenue of at least EUR750 million in at least two of the last four fiscal years, the regime operates through the

Pillar Two framework, including a qualified domestic minimum top-up tax. Where the jurisdictional effective tax rate falls below 15%, a domestic top-up tax is triggered.

The regime introduces technical complexity in calculating effective tax rates, reconciling accounting standards (Bulgarian GAAP or IFRS), deferred tax positions and group consolidation adjustments. Recent legislative clarifications have refined calculation bases and reporting timelines.

Beyond increased effective taxation, the regime is expected to become a focal point in audits. The interplay between local computations and group-level reporting creates scope for interpretative disputes, particularly regarding covered taxes, the allocation of profits and the treatment of temporary differences.

As cross-border information exchange expands, coordinated audit activity across jurisdictions becomes more likely. Proactive documentation of methodologies, assumptions and reconciliation processes is essential not only for compliance but also for dispute mitigation.

Amendments to the Local Taxes and Fees Act

Amendments effective from 1 January 2026 introduce material changes to municipal taxation, expanding local discretion and increasing the likelihood of administrative disputes.

The reform of the household waste collection fee abolishes the traditional property-value-based model and permits calculation based on indicators of actual waste generation in line with the polluter-pays principle. Although environmentally aligned, the reform allows divergent municipal methodologies, raising proportionality and evidentiary concerns.

For businesses with substantial real estate portfolios or logistics operations, fee determinations may materially affect operating costs. Differences in municipal interpretation may give rise to appeals based on legality, equal treatment or methodological consistency.

Similarly, linking motor vehicle tax to Euro 7 emission standards embeds environmental criteria into local taxation. Classification disputes and evidentiary challenges may arise where documentation or categorisation is contested.

The combination of expanded discretion, euro-related fiscal adjustments and budgetary fallback mechanisms increases procedural complexity and the potential for litigation.

EU Carbon Border Adjustment Mechanism (CBAM)

The EU Carbon Border Adjustment Mechanism became fully operational on 1 January 2026, introducing a carbon pricing obligation on imports of specified carbon-intensive goods, including cement, iron and steel, aluminium, fertilisers, electricity and hydrogen.

Importers must calculate embedded emissions and surrender corresponding CBAM certificates, aligning carbon costs with the EU Emissions Trading System. The regime increases cost exposure and compliance obligations, particularly for supply chains reliant on third-country inputs.

CBAM reinforces a broader trend toward integrating environmental criteria into tax and regulatory frameworks. Emissions data accuracy, supplier transparency and documentation integrity will become central compliance priorities. Given the financial implications, disputes may arise over:

- calculation methodologies;
- verification standards; and
- allocation of carbon costs across contractual chains.

Conclusion: Convergence, Digitalisation and Intensified Scrutiny

Taken together, these developments signal a structural transformation of Bulgaria's tax and regulatory landscape. The introduction of the euro, implementation of SAF-T reporting, modernisation of transfer pricing rules, expansion of fiscal control mechanisms, adoption of the 15% global minimum tax, reform of municipal taxation, and operationalisation of CBAM collectively reflect convergence with EU and OECD standards and a decisive shift toward data-driven, substance-focused enforcement.

Three overarching themes emerge, as follows.

- First: digitalisation. SAF-T and enhanced data analytics fundamentally alter audit methodology, enabling systematic cross-checks across VAT, accounting and transfer pricing domains.
- Second: integration. Regulatory regimes increasingly interact – euro transition rules intersect with VAT reporting; fiscal controls align with digital data submissions; global minimum tax calculations rely on accounting coherence; environmental taxation links local and EU-level policies.
- Third: enforcement intensity. Expanded supervisory powers, turnover-based sanctions and integrated data analysis increase audit exposure and dispute frequency.

For businesses, compliance is no longer a compartmentalised exercise. Consistency across accounting systems, VAT treatment, logistics documentation, transfer pricing policies and environmental reporting is becoming a core risk-management priority. In this evolving environment, proactive planning, early alignment of operational and tax models and sophisticated audit defence strategies will play a decisive role in mitigating regulatory and financial exposure.

CHILE



Law and Practice

Contributed by:
Javier Cortés, Juan Pablo Márquez and Gonzalo Pérez
Cortés Del Río Tax & Legal

Contents

1. Sources and Principles p.91
1.1 Domestic Sources of International Tax Law p.91
1.2 Hierarchy of Sources p.91
1.3 OECD Model/United Nations Influence on Treaty Practice p.92
1.4 Multilateral Instrument p.92

2. Territoriality, Residence and Permanent Establishment p.92
2.1 General Principle of Territorial Taxation p.92
2.2 Tax Residence of Individuals p.92
2.3 Taxation of Resident Individuals p.93
2.4 Taxation of Non-Resident Individuals p.93
2.5 Tax Residence of Legal Entities p.94
2.6 Definition of Permanent Establishment p.94

3. Taxation of Cross-Border Income p.94
3.1 Income From Immovable Property p.94
3.2 Business Profits p.95
3.3 Passive Income p.95
3.4 Capital Gains p.96
3.5 Employment Income p.96
3.6 Other Income p.96

4. OECD/G20 Global Tax Reform p.96
4.1 Pillar One – Amount B p.96
4.2 Pillar One – Amount A p.97
4.3 Pillar Two p.97
4.4 Specific Features or Deviations of Pillar Two p.97
4.5 Digital Services Tax p.97

5. Anti-Avoidance and Anti-Evasion Measures p.97
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.97
5.2 Anti-Avoidance Mechanisms p.98
5.3 Blacklists and Non-Cooperative Jurisdictions p.99
5.4 Reporting Obligations and Disclosure Regimes p.99
5.5 Role of Tax Authorities and Enforcement Measures p.99

6. Penalties and Sanctions p.100
6.1 Tax Penalties p.100
6.2 Criminal Penalties p.100
6.3 Interaction Between Tax and Criminal Procedures p.101

7. Administrative Co-Operation p.101
7.1 Legal Framework for Administrative Co-Operation p.101
7.2 Exchange of Information Clauses in Tax Agreements p.101
7.3 Other Forms of International Tax Collaboration p.101

8. Mutual Agreement Procedures and Arbitration p.102
8.1 Availability and Legal Basis p.102
8.2 Application Deadlines p.102
8.3 Mandatory Binding Arbitration p.102

9. Dispute Prevention p.102
9.1 Advance Pricing Agreements p.102
9.2 Other Mechanisms p.103

Cortés Del Río Tax & Legal was established five years ago and is a boutique Chilean law firm specialising in tax, corporate law and real estate transactions. Within the tax field, it provides services in international taxation, VAT, transfer pricing, real estate tax and cross-border transactions, among others. The firm advises multinational and domestic corporations across several industries, private equity funds and HNW individuals on the full spectrum of Chilean and international tax matters, from corporate restructurings and M&A transactions to tax compliance, including controversies before the Chilean IRS and tax courts. A distinguishing feature is the firm's commitment to the application of AI in the drafting and preparation of documents, tax compliance and legal services in general. The lawyers play a proactive commercial and networking role alongside their clients, promoting business growth through joint commercial initiatives and regular networking events, with chambers of commerce and universities, among others.

Authors



Javier Cortés is the founding partner of Cortés Del Río Tax & Legal and a leading practitioner in Chile in corporate tax, VAT, international taxation and real estate tax, among others. He advises multinational companies on cross-border structuring and tax treaty analysis, assists expats with global mobility issues and provides tax advisory to companies, family offices and non-profit organisations on a wide variety of issues, including tax controversy. Javier regularly contributes to academic publications and international conferences in different tax matters such as the application of the GAAR, and the intersection between AI and taxes. Javier has also been Chile's national reporter for IFA congresses.



Juan Pablo Márquez worked for ten years in Deloitte Chile's international tax group, advising clients from various industries on domestic and cross-border matters. His practice focused on income tax, VAT, structures for investing in Chile, the application of double tax treaties, and taxation in general. Between 2023 and 2024, before joining Cortés Del Río Tax & Legal, he served as an indirect tax manager at Deloitte LLP in San Francisco, California, advising clients across a range of industries, such as big tech, energy and pharmaceuticals.



Gonzalo Pérez is an associate at Cortés Del Río Tax & Legal with over four years' experience in corporate law, M&A transactions, real estate law and general tax advisory services. Gonzalo advises local and foreign companies, family offices and individuals in complex real estate transactions and corporate reorganisations, from both a corporate law and tax perspective. He also participates in tax structuring projects, which include advisory and implementation services.

Cortés Del Río Tax & Legal

Alonso de Córdova 5151
Office 1004
Las Condes
Santiago
Chile

Tel: +569 93182041
Email: jcortes@cortestaxlegal.com
Web: www.cortestaxlegal.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main domestic sources of international tax law in Chile are: the Chilean Constitution, which sets forth certain principles regarding taxation, guarantees individual's economic rights and states that the exercise of sovereignty recognises as a limitation respect for the essential rights that emanate from human nature, as guaranteed by the Constitution and international treaties ratified by Chile that are currently in force. Additionally, there are several tax laws which refer to different kind of taxes, such as the Income Tax Law (ITL), Tax Code, VAT Law, Stamp Tax Law and Real Estate Tax Law, among others. These instruments are supplemented by a wide range of special laws which include tax provisions, as well as certain regulations enacted by the executive branch to implement laws.

In addition, the Chilean tax authority ("Chilean IRS") issues:

- circulars which are interpretations of general application;
- resolutions aimed at regulating matters of an administrative nature; and
- specific rulings (*oficios*) which are binding opinions issued in response to specific taxpayer queries.

While these instruments are formally binding only on the Chilean IRS officials, they carry considerable practical weight and taxpayers routinely rely on them for planning purposes. Academic commentary by scholars also contributes to the interpretation of principles of international taxation.

Judicial precedents from the tax courts, the Courts of Appeals and the Supreme Court play a growing role in shaping Chilean domestic and international tax law. Although Chile does not formally apply the doctrine of binding precedent (stare decisis), Supreme Court rulings are highly persuasive in the lower courts and for taxpayers in general.

Chile has an extensive treaty network comprising double taxation agreements (DTAs) with the following countries: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Croatia, Czech Republic, Denmark, Ecuador, France, India, Ireland, Italy, Japan, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Russia, Spain, South Africa, South Korea, Sweden, Switzerland, Thailand, the UAE, the United Kingdom, the United States of America, and Uruguay.

1.2 Hierarchy of Sources

The highest hierarchy of legal sources in Chile is the Constitution, followed by the tax laws in second place. International treaties ratified and enacted in accordance with the Constitution have the force of domestic law. In practice, treaty provisions offering more favourable treatment to a taxpayer will take precedence over conflicting domestic rules.

Below the legal sources mentioned above are secondary, non-binding sources such as Supreme Court rulings and Court of Appeal rulings, which are persuasive in terms of lower court decisions.

Guidance issued by the Chilean IRS does not bind the courts or taxpayers, but nonetheless provides important information on the administration's interpretative position.

1.3 OECD Model/United Nations Influence on Treaty Practice

Chile has been a full member of the OECD since 7 May 2010 and generally follows the OECD Model Tax Convention ("OECD Model") both in its treaty practice and in the interpretation of its domestic international tax rules. The Chilean IRS has expressly acknowledged the relevance of the OECD commentaries as an interpretative tool, even where specific treaty provisions pre-date Chile's OECD membership.

Chile's more recent treaties are substantially aligned with the OECD Model, incorporating updated Base Erosion and Profit Shifting (BEPS)-related provisions such as principal purpose tests (PPTs), limitation of benefits (LOB) provision clauses and treaty shopping anti-abuse rules.

Chile also reserves certain positions with respect to the taxation of capital gains on indirect transfers, consistent with its domestic rules under the domestic ITL and the taxation of technical services.

Some tax treaties entered into by Chile follow the UN treaty model regarding technical services and permanent establishment considerations, granting broader taxation powers to the source country.

None of the tax treaties entered into by Chile contain a binding arbitration clause.

Considering that Chile has an integrated tax system according to which corporate tax paid by a legal entity may be used as a credit against foreign owner/shareholder tax, tax treaties entered into by Chile do not provide a reduced rate on dividends abroad (the so-called "Chile Clause").

1.4 Multilateral Instrument

Chile signed the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument or MLI) which entered into force in Chile on 1 November 2021, following ratification by the Chilean Congress.

Chile opted to apply a broad range of MLI provisions to its tax treaties, including: the principal purpose test as the anti-abuse standard; the preamble language on treaty purposes; and anti-fragmentation rules for permanent establishment (PE) purposes.

Note that Chile did not adopt binding arbitration.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Chile applies a worldwide taxation system. Article 3 of the Chilean ITL establishes that persons domiciled or resident in Chile are subject to tax on their worldwide income, while persons without domicile or residence in Chile are subject to tax only on their Chilean-source income.

Income is considered to be sourced in Chile if it arises from assets located in the country or from activities carried out in Chile.

Chile introduced an indirect transfer rule, based on which gains derived from the disposal of shares or interests in foreign entities are considered Chilean source income, if certain thresholds are exceeded. This provision has significant implications for cross-border M&A transactions involving indirect transfers of Chilean assets.

Foreign source income is taxable in Chile on a cash basis, that is, when income is received in Chile by taxpayers, unless controlled foreign company (CFC) rules apply.

2.2 Tax Residence of Individuals

Tax residence is determined in Chile by two concepts: domicile and residence.

An individual is considered to have "residence" in Chile if they remain in Chile, whether continuously or not, for a period or periods which in total add up to more than 183 days within any 12-month period.

The concept of "domicile" is more subjective, as it refers to the place where a person demonstrates the intent to remain. The existence of domicile or lack thereof must be evidenced before the Chilean IRS, which mainly interprets this concept based on economic factors.

Either residence or domicile suffices to trigger worldwide tax liability. The ITL provides a three-year grace period for newly resident individuals who are not Chilean nationals: during the first three years following the establishment of domicile or residence in Chile, only Chilean-source income is subject to Chilean tax. The tax authority may extend this period in exceptional circumstances. This rule has significant implications for inbound assignment planning and for individuals relocating to Chile.

Individuals moving away from Chile have an obligation to file a declaration informing the IRS of this situation. In this regard, the Chilean IRS is reluctant to consider that an individual is no longer domiciled or resident in Chile and to release them from their domestic tax obligations.

2.3 Taxation of Resident Individuals

Individuals must file an annual income tax return in April each year. Individuals resident or domiciled in Chile are subject to progressive annual personal income tax with rates ranging from 0% to 40% (the top marginal rate of 40% is applicable to annual income exceeding approximately USD200,000). This tax applies to all income received during the tax year from worldwide sources.

Employment income is subject to withholding on a monthly basis at the same progressive rates as annual income; at financial year-end, the taxpayer may use the employment tax withheld by their employer against their personal income tax.

Resident individuals who are shareholders or partners in Chilean entities must include within their personal taxable income dividends or profits distributed by local companies, according to the following rules:

- The corporate income tax paid at the company level can be fully or partially offset against the personal income tax due by the shareholder. Under the general regime (partially integrated regime), only 65% of the corporate tax paid is creditable against their personal income tax, and this may result in an effective overall tax burden of approximately 44.45% on distributed profits. The new administration that took office in Chile sent a tax bill of law in April 2026, which among other measures, proposes to fully integrate the tax system. This means that the corporate tax paid at the company level will be fully creditable against shareholders' personal income taxes.
- On the other hand, individuals who receive profits paid out of a company subject to the special small and medium enterprise (SME) regime may use 100% of the corporate income tax paid at a company level against their personal income tax.

Regarding foreign income, as explained above, it is taxable, as a general rule, on a cash basis, unless the CFC rules apply. Foreign tax credits are available, subject to limitations.

Chile does not contemplate a participation exemption regime for resident individuals.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals that obtain Chilean-source income are subject to withholding tax (WHT). The Chilean payer is responsible for withholding and paying the tax to the Chilean IRS through form No 50. The tax must be declared and paid no later than the 12th day of the month following that in which the payment was made to the foreign beneficiary.

The general WHT rate is 35%, but specific reduced rates apply to particular categories of income:

- Dividends – these are generally subject to 35% WHT. Against the 35% WHT, it is possible to credit all or part of the corporate income tax paid at the company level, depending on the tax regime applicable to the company paying out the dividend.

- Interest – generally speaking, interest is subject to 35% WHT. However, interest paid to foreign or international financial institutions or banks may be subject to 4% WHT under a domestic provision.
- Royalties – these are generally subject to a 30% WHT rate. Nevertheless, a reduced 15% rate is available for payment for the use of invention patents, trade marks and other intellectual property rights, including software. Software that qualifies as standard software under the law may be exempt from WHT in Chile.
- Technical services – these are generally subject to 15% WHT. The rate increases to 20% if the recipient of the payment is a resident of a country considered to have a preferential tax regime according to the ITL.

These rates may be reduced or eliminated under applicable DTAs. For the application of DTA reduced rates the beneficiary must evidence its residence through a tax residence certificate. Other formalities are also required.

2.5 Tax Residence of Legal Entities

A legal entity is considered to be resident in Chile and therefore subject to Chilean corporate tax on its worldwide income if it is incorporated in Chile.

Chile does not recognise the "place of effective management" as a criterion to determine the residence of legal entities, though the concept may be relevant in the interpretation of treaty tie-breaker rules for entities that could be considered resident in two jurisdictions under their respective domestic laws.

2.6 Definition of Permanent Establishment

Chile introduced a statutory definition of PE through a tax reform in 2020. Prior to this reform, the concept was applied primarily through treaty provisions and the Chilean IRS administrative guidance.

The domestic definition broadly follows Article 5 of the OECD Model, stating that a PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on, whether or not it is used exclusively for such purpose, such as a branch of a foreign company, facilities, construction sites, or a factory, etc.

A PE is also deemed to exist where a person is acting in Chile on behalf of a foreign company and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise.

Chile's more recent treaties, and those modified by the MLI, incorporate the post-BEPS PE provisions, including the anti-fragmentation rules and the revised dependent agent standard. Older treaties may retain more traditional definitions.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Income derived from immovable property located in Chile, including rental income and gains from the sale of real estate property, is Chilean-source income and is subject to Chilean tax.

For resident individuals or legal entities, rental income from Chilean real estate property is, generally speaking, considered ordinary income and therefore must be included in their respective taxable bases.

Capital gains are generally taxable – however, individuals may benefit from specific treatment of capital gains from the disposal of real estate:

- Capital gains on the sale of real estate property may be exempt from income tax up to 8,000 UF, or approximately USD360,000 (a UF or
- *unidad de fomento* is a specific unit of currency used in Chile for finance, banking and real estate). This benefit may be used by taxpayers in one or multiple transactions in the disposal of property, until the total exempt amount is exhausted during the lifetime of the taxpayer.
- Once the exemption is exhausted, any gain will be taxed at 10% income tax, subject to requirements.
- Some residential immovable property enjoys additional tax benefits, such as an exemption on rental income, exemption from inheritance tax and reduced stamp tax where the property is acquired through a loan. These benefits apply to property

which does not exceed 140 square metres and is destined for residential purposes.
- Capital gains arising from immovable property acquired prior to 2004 may be fully exempt from taxation, subject to requirements.

For non-residents, rental income and capital gains from Chilean immovable property are subject to WHT at 35%. Under Chile's DTAs, gains on immovable property are generally taxable in the state where the property is situated (consistent with Article 6 of the OECD Model), affirming Chile's right to tax these gains as the source state.

3.2 Business Profits

If a legal entity is resident in Chile it will be subject to corporate income tax on its worldwide income.

Under the general tax regime (partially integrated tax regime) a company is subject to 27% corporate tax on its accrued and perceived income. Expenses are deductible when paid or accrued, as long as they are necessary or have the potential to generate taxable income. Taxpayers subject to this regime have the obligation to carry full accounting records in Chile for tax purposes.

According to the text of a bill of law sent to Congress, if approved, the corporate tax rate will gradually be reduced from the current 27% to 23% as from 2029 onwards.

Under the SME tax regime, a company is subject to a transitory 12.5% corporate tax on its perceived income. Such transitory reduced tax rate applies for financial years 2026 and 2027 and increases to 15% for year 2028. As from 2029, the statutory corporate tax rate for SMEs will increase to 23%. Under this regime, expenses are deductible when paid. In other words, legal entities declare income on a cash basis. Additionally, taxpayers may carry full or simplified accounting records.

Business profits obtained by non-resident entities are generally taxable in Chile at a 35% rate. Reduced rates may apply in the case of interest and royalty payments, technical assistance, lease of movable fixed assets, and insurance, etc.

Under the treaties signed by Chile, business profits are only taxable in the residence state, unless the taxpayer also triggers a PE in Chile.

3.3 Passive Income

Dividends

Dividends distributed by Chilean companies to non-resident shareholders are subject to WHT at a rate of 35%. The company paying the dividend has the obligation to withhold and declare the tax before the Chilean IRS.

A credit is available for corporate tax paid at the company level.

Shareholders resident in non-treaty countries

Shareholders who receive dividends paid out of a company subject to the general tax regime are entitled to use 65% of the corporate tax paid as a credit against the 35% WHT, thus, the total tax burden on profits sourced in Chile amounts to 44.45%.

It is important to note that the new administration that took office in March 2026 sent a tax reform bill to Congress that proposes to fully integrate the tax system. If approved, the corporate tax paid will be 100% creditable against shareholder taxation, regardless of the residence of the shareholder, reducing the total tax burden to 35%.

Shareholders resident in tax-treaty countries

If the shareholder is resident in a country with a tax treaty with Chile, 100% of the corporate income tax is creditable against the 35% WHT – in other words, the total tax burden on Chilean profits amounts to 35%.

Chile's tax treaties do not reduce the rate of withholding tax on dividends, as they contain a special clause which states that, as long as Chile provides a credit for the corporate income tax paid, no reductions will apply (the so-called "Chile Clause").

Interest

Interest paid to non-residents is subject to WHT, at a general rate of 35%.

Reduced rates apply in several circumstances, such as a reduced 4% for loans granted by foreign banks or foreign and international financial institutions.

Treaty rates apply a reduced 10% or 15% WHT rate.

Chile has set forth thin capitalisation ("thin cap") rules under which companies that are paying interest at reduced rates and that exceed a 3:1 debt-to-equity ratio may be subject to a thin cap tax of 35% over the amount of interest deemed excessive. Nevertheless, interest is still tax deductible according to the general rules.

Royalties

Royalties are generally subject to a 30% WHT rate, but a reduced 15% rate is available for payment for the use of invention patents, trade marks, industrial drawings and tailor-made software, among other intellectual property rights.

Software that qualifies as standard software under the law may be exempt from WHT in Chile. However, payments made from Chile to overseas countries, while exempt from WHT, are still subject to 19% VAT.

3.4 Capital Gains

Capital gains on the disposal of assets by Chilean residents are considered Chilean source income and are therefore subject to 35% WHT. Reduced rates are available under a few of Chile's tax treaties.

The tax must be withheld and paid by the buyer at an interim rate of 10% over the purchase price or 35% over the gain. It is possible to request the Chilean IRS to certify the taxable gain. The foreign beneficiary will have the obligation to file an annual tax return and declare and pay the taxable gain using the WHT as a credit against its tax liability.

Chile has an indirect transfer provision according to which, gains derived from the disposal of shares or interests in foreign entities may be taxable if certain conditions are met or thresholds are exceeded.

The Chilean-source portion of the gain is subject to income WHT at 35%. This rule has important implications for cross-border M&A and private equity transactions involving the indirect transfer of Chilean companies, as buyers and sellers must consider potential Chilean tax exposure even in a case where all the parties are non-Chilean.

3.5 Employment Income

Non-resident individuals who obtain income from employment are generally subject to income WHT at 15% on their Chilean-source employment income.

Where there is a DTA, Article 15 standard applies to short-term assignments if:

- remuneration derived by a resident of the other contracting state in respect of employment exercised in Chile is exempt from Chilean tax if the employee is present in Chile for 183 days or fewer in any 12-month period beginning or ending in the fiscal year concerned;
- the remuneration is paid by an employer not resident in Chile; and
- the remuneration is not borne by a PE of the employer in Chile.

Chile does not have specific legislation addressing the tax treatment of remote work in cross-border scenarios. The Chilean IRS has issued limited administrative guidance acknowledging that the place where employment services are rendered determines the source of income; accordingly, work performed remotely from Chile by a resident for a foreign employer is considered Chilean-source employment income subject to employment tax.

3.6 Other Income

Any Chilean-source income which does not have a specific treatment is generally taxed at a 35% withholding tax rate. The treaties signed by Chile usually allow for the source country to tax other income if the income originated in the source country.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As an OECD member and adherent to the BEPS Inclusive Framework, Chile has committed to applying Amount B as a simplified and streamlined approach

to the pricing of baseline marketing and distribution activities. However, Chile has not yet signed the Pillar One MLI, nor enacted any specific legislation to implement Amount B.

4.2 Pillar One – Amount A

Chile has actively participated in the OECD Inclusive Framework negotiations and public consultations on the Multilateral Convention for Pillar One Amount A. However, Chile has not yet signed the Pillar One MLI, nor enacted any specific legislation to implement Amount A.

4.3 Pillar Two

Chile has not yet enacted legislation to implement the Global Anti-Base Erosion (GloBE) rules under Pillar Two. At the time of publication, no formal bill had been introduced to the Chilean Congress.

Although Chile enacted a tax reform in 2024 which introduced significant changes to transfer pricing, anti-avoidance rules and information exchange, it did not include Pillar Two provisions.

4.4 Specific Features or Deviations of Pillar Two

As Pillar Two has not been enacted in Chile, there are no domestic deviations to report at this time.

Given Chile's corporate tax rate of 27%, Chilean subsidiaries of foreign multinationals are unlikely to be subject to top-up taxation under Pillar Two in most circumstances, as the effective tax rate generally exceeds the 15% minimum.

4.5 Digital Services Tax

Chile does not impose a standalone digital services tax (DST) on revenues derived from digital services.

Instead, Chile extended its existing VAT framework to cover digital services delivered by foreign providers to Chilean consumers. Under the VAT Law and the relevant Chilean IRS guidance, foreign digital service providers whose services are consumed in Chile must register with the Chilean IRS (using a simplified online registration system), charge 19% Chilean VAT on their services and remit the tax. The Chilean IRS maintains a publicly available register of foreign digital service providers.

This regime covers streaming platforms, software as a service, e-commerce intermediation, cloud services and online gaming, among other digital services.

Income tax treatment of payments to foreign digital providers follows existing withholding rules depending on the characterisation of the payment (royalties, services or business profits).

As a general rule, payments abroad for digital services are exempt from WHT, but subject to VAT.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

General Anti-Avoidance Rule

The Tax Code has had a General Anti-Avoidance Rule (GAAR) in force as from 2015. The GAAR sets forth a presumption that taxpayers are considered to act in good faith, unless proven otherwise. This means that the effects of the acts, contracts or events that a taxpayer undertakes will be recognised in accordance with the legal nature of such acts, contracts or events.

However, such presumption does not apply to those taxpayers who, through their acts or actions, elude a taxable event by means of an abuse of the law or simulation.

The burden of proof for the existence of tax avoidance due to abuse or simulation lies with the Chilean IRS. Additionally, the existence of abuse of law or simulation must be declared by a tax court.

Abuse of law

There is abuse of law for tax purposes when a material or legal act, individually or collectively considered, has no significant legal or economic consequences for the taxpayer or a third party, other than:

- avoiding a taxable event in whole or in part;

• reducing the taxable base or tax liability; or
• postponing or deferring the triggering of a tax.

In general terms, Chilean law follows what in international doctrine is known as the "business purpose test", which aims to reveal the economic or legal substance over the forms presented in a particular operation or transaction.

The Chilean GAAR enables the taxpayer to opt between conduct and alternatives or mechanisms available pursuant to the tax legislation. Therefore, the sole circumstance that the same juridical or economic result may be achieved by carrying out juridical acts or transactions that cause a higher tax burden is not constitutive of an abusive act.

Simulation

Simulation for tax purposes is when the legal acts or transactions carried out by the taxpayer contribute to disguising a taxable event, the elements that trigger a tax liability, or the amount or date of occurrence of the taxable event.

Catalogue of Tax Schemes

Since 2021, the Chilean IRS has published a "Catalogue of Tax Schemes", which is updated annually. This is a list of aggressive tax planning schemes identified by the Chilean IRS as potentially abusive.

The catalogue serves as a transparency and deterrence tool. Taxpayers who carry out schemes and implement structures included within the listed schemes should be aware that the tax authority may challenge the scheme under the GAAR.

The catalogue includes several structures and schemes covering areas including dividend stripping, artificial fragmentation of transactions, and misuse of treaty benefits.

Tax Evasion

Tax evasion refers to unlawful conduct intended to reduce taxable income, falsify records or deceive the tax authority, and is subject to criminal sanctions under Article 97 of the Tax Code (see **6.2 Criminal Penalties**).

5.2 Anti-Avoidance Mechanisms

Chile has a comprehensive set of Specific Anti-Avoidance Rules (SAAR) that complement the GAAR, which are explained below.

- Transfer pricing rule: according to this provision, transactions between related parties must be at arm's length. In this regard, Chile follows the OECD Transfer Pricing Guidelines as the primary interpretative framework. The Chilean IRS has the authority to reassess prices and values if the one agreed by the parties is not at arm's length. Where an adjustment is made by the tax authority, a 40% penalty tax applies on the difference determined.
- CFC rules: according to Chilean general tax rules, foreign income is taxable in Chile on a cash basis. However, passive income earned by foreign entities controlled by Chilean residents (a CFC) is attributed to the Chilean resident on an accrual basis. Control is defined broadly to include direct and indirect holdings and acting-in-concert arrangements. According to this provision, passive income includes, among other things, dividends of non-controlled entities received by the CFC, interest, royalties in certain cases, income from real estate (except if the CFC is a real estate company) and capital gains arising from the disposal of certain assets.
- Thin capitalisation rules: these rules apply when a Chilean entity and the foreign lender are related or deemed related and the loan qualifies for a reduced WHT rate on interest and other loan charges, whether under domestic rules or under a double tax treaty. Excessive indebtedness will be deemed to exist when the Chilean debtor's total indebtedness (including entities incorporated or resident abroad, be they related or not to the debtor) exceeds three times the taxpayer's tax equity at the end of the respective year (3:1 debt/equity ratio). If the Chilean entity is excessively in debt, interest on the portion of the loan deemed excessive is subject to a thin capitalisation tax of 35%, which is payable by the borrower, with the WHT paid available as credit.
- Preferential tax regimes blacklist: transactions with entities located in jurisdictions listed as preferential tax regimes are subject to penalties and restrictions.

5.3 Blacklists and Non-Cooperative Jurisdictions

The Chilean IRS periodically issues a list of jurisdictions which are considered to have preferential tax regimes, mainly due to the fact that such jurisdictions have not implemented information exchange agreements with Chile or do not comply with the international standards of fiscal transparency of the Global Transparency Forum.

As of 2025, approximately 102 jurisdictions were included on this list.

The consequences of operating with entities in blacklisted jurisdictions include:

- the presumption that all income obtained by a CFC resident in a preferential tax regime is passive income, and therefore subject to taxes in Chile on an accrued basis;
- certain royalty payments made to entities resident in preferential tax regimes are subject to a WHT overcharge; and
- in the case of the indirect transfer provision, if the entity being disposed of (owner of Chilean assets) is resident in a preferential tax regime, capital gain is triggered in Chile regardless of the ownership percentage of the foreign entity being transferred.

5.4 Reporting Obligations and Disclosure Regimes

General Reporting Obligations

As a general rule, taxpayers have the obligation to declare their worldwide income on an annual basis through an annual income tax return.

Additionally, taxpayers have an obligation to file sworn statements informing the Chilean IRS about certain transactions, such as:

- loans with foreign related parties that indicate the local debtor is excessively indebted;
- other transactions with foreign related parties;
- disposal of real estate;
- lease agreements with third parties; and
- transactions carried out in a stock exchange, etc.

Banks and Financial Institutions

Banks and financial institutions must report to the IRS the balance or value and the total amount of credits made to the current accounts of individuals or legal entities when the balance or total credits show a daily, weekly or monthly movement equal to or greater than 1,500 UF (approximately USD70,000), regardless of their legal nature.

Transfer Pricing Documentation

According to the transfer pricing provision, taxpayers engaged in transactions with foreign related parties are required to prepare transfer pricing documentation. Large multinational groups with annual consolidated revenues exceeding EUR750 million are required to prepare a country-by-country report (CbCR), a master file and a local file.

Additionally, taxpayers engaged in transactions with related parties abroad must file Form 1907, which reports the nature, amounts and transfer pricing methods applied to cross-border related-party transactions. This form is due annually in June.

Common Reporting Standard

Chile has implemented the OECD Common Reporting Standard (CRS) for the automatic exchange of financial account information, as from 2018. Under Resolution No 48 of 2018 of the IRS, Chilean financial institutions (banks, brokers, insurance companies and fund managers) are required to identify account holders who are tax residents of foreign jurisdictions and report their account information to the Chilean IRS, which in turn exchanges this information with foreign tax authorities.

5.5 Role of Tax Authorities and Enforcement Measures

The Chilean IRS is the primary tax authority responsible for the administration, assessment and collection of direct and indirect taxes in Chile.

The tax authority has broad powers under the Tax Code to request information; conduct audits and examinations of taxpayers' books, accounts and records; and issue assessments where it determines that tax has been underpaid.

The Chilean IRS's powers include:

- the power to request information from taxpayers and third parties;
- the power to examine the accounting records and documentation of any taxpayer or related party;
- the power to summon taxpayers in order to provide information and documentation regarding specific transactions;
- the power to adjust the price of transactions using the reassessment power, under which, the IRS may disregard a transaction price and reassess its value according to the fair market value;
- the power to carry out unannounced visits to inspect the premises of taxpayers; and
- the power to obtain banking information subject to secrecy (only with the taxpayer's consent or with prior judicial authorisation from the competent tax and customs court) under a specific procedure.

The statute of limitations for issuing tax assessments and collecting taxes is three years, counted from the deadline for filing the corresponding tax return. Such three-year period is extended to six years for cases involving tax evasion or non-filing of tax returns.

6. Penalties and Sanctions

6.1 Tax Penalties

The general penalty framework in tax violations is generally the same for cross-border and domestic tax violations. The Chilean IRS is responsible for imposing and collecting administrative tax penalties.

Criminal sanctions require the intervention of the courts, and cases are only initiated at the request of the Chilean IRS.

Administrative penalties include:

- a penalty payment, usually a percentage of the unpaid tax or a pre-determined amount;
- a penalty interest payment which is calculated based on the current interest rate and which accrues on a daily basis; and
- other measures, such as closure of the business premises, in more severe cases.

The Chilean IRS has a forgiveness policy for prompt payment of unpaid taxes, resulting in a percentage of the tax debt being forgiven automatically upon online payment by the taxpayer. The Chilean IRS may grant further forgiveness of interest and penalties in certain cases, at the taxpayer's request.

Regarding cross-border penalties, there is a specific penalty applicable to transfer pricing adjustments, consisting of 40% of the difference detected by the Chilean IRS, and in some cases, the Chilean IRS may apply an additional 5% penalty if the taxpayer does not co-operate during the audit process.

Penalties may be challenged before the tax courts in the first instance and before the Courts of Appeal on further review. The Chilean IRS may grant total or partial forgiveness of interest and penalties, where there is 100% prompt payment of the underlying tax, pursuant to the annual condonement decree issued by the Ministry of Finance.

6.2 Criminal Penalties

The Chilean Tax Code contains specific criminal penalties regarding different types of tax evasion and tax fraud situations:

- malicious presentation of false tax declarations involves a penalty of 100% to 300% of the amount of tax evaded, and could involve imprisonment for three to five years;
- fraudulent claims for tax refunds involve a penalty of 100% to 400% of the amount unduly claimed, and could involve imprisonment for three to 15 years; and
- malicious omission of tax declarations involves a fine of 50% to 300% of the taxes due, and could involve imprisonment of 541 days to five years.

While legal entities cannot be imprisoned, they are subject to significant financial penalties and the court may, in extreme cases, impose forced dissolution.

Legal representatives and board members of legal entities may be subject to penalties on behalf of the entity, in certain cases.

6.3 Interaction Between Tax and Criminal Procedures

The Chilean system grants the IRS the power to initiate criminal tax proceedings.

Once the Chilean IRS decides to proceed criminally, it files a criminal complaint with the competent criminal court, which refers the matter to the Public Prosecutor's Office. The criminal investigation is then conducted by public prosecutors, with the Chilean IRS acting as a party to the case. The administrative and criminal proceedings may run concurrently.

The 2024 Tax Reform introduced mechanisms to facilitate the prosecution of criminal cases, such as, a simplified procedure to disregard bank secrecy in the case of tax crimes, and enhanced whistle-blower protections to encourage the reporting of large-scale tax fraud schemes, among others.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Chile's framework for international administrative co-operation in tax matters rests on three principal pillars:

- The OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters – Chile signed the Convention in 2013 and it entered into force in 2016. The Convention provides the legal basis for information exchange (on request, spontaneously and automatically), tax collection assistance and service of documents. Chile reserved the right not to provide assistance in the recovery of any tax or in the recovery of an administrative fine, with respect to all taxes, and not to provide assistance in the service or transmission of documents.
- Bilateral double taxation agreements – the exchange of information clause contained in Chile's DTAs provides the legal basis for on-request and spontaneous exchanges with treaty partners.
- Tax information exchange agreements – Chile has concluded this kind of agreement with certain jurisdictions that do not have a full DTA in place, thereby extending the information exchange framework.

Domestic implementation of exchange of information commitments is provided for in Article 6 of the Tax Code, as amended by successive reforms.

7.2 Exchange of Information Clauses in Tax Agreements

Chile participates in all three modalities of information exchange recognised under the OECD standards:

- Exchange on request – the Chilean IRS processes requests from foreign competent authorities and submits requests to foreign authorities through the established channels under the applicable double tax treaty.
- Automatic exchange – Chile participates in the automatic exchange of financial account information under the CRS. Chile also automatically exchanges CbCRs with Inclusive Framework members and receives CbCRs from other jurisdictions for Chilean MNE groups.
- Spontaneous exchange – competent authority staff at the Chilean IRS identify information of potential relevance to foreign tax authorities and transmit it spontaneously, pursuant to the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters and treaty obligations.

7.3 Other Forms of International Tax Collaboration

In addition to mutual agreement procedures (MAPs) and advance pricing agreements (APAs) (see **8. Mutual Agreement Procedures and Arbitration** and **9. Dispute Prevention**), Chile participates in the following forms of multilateral tax collaboration:

- BEPS Inclusive Framework – Chile adheres to the G20/OECD BEPS Inclusive Framework and has committed to implementing the four minimum standards: CbCR, prevention of harmful tax practices, prevention of treaty abuse, and effective dispute resolution.
- OECD Tax Administration Forum – Chile is an active member of the Inter-American Centre of Tax Administrations (CIAT), through which it engages in capacity building, best-practice exchange, and joint projects with other Latin American tax administrations.

- Joint and simultaneous audits – Chile has the legal framework under the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters to participate in joint and simultaneous audits with foreign tax authorities, though formal joint-audit programmes have not been widely implemented. The Chilean IRS has conducted co-ordination calls and information-sharing exercises with major treaty partners in specific high-risk cases.
- ICAP – Chile has expressed interest in the OECD's International Compliance Assurance Programme (ICAP) but had not formally participated in ICAP rounds at the time of publication.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

All tax treaties entered into by Chile and third parties include a MAP provision. This procedure is contemplated to prevent and solve any controversy regarding the interpretation and application of tax treaties. Chile has committed to the implementation of the minimum standard established in Action 14 of BEPS, which should bilaterally modify its tax treaties to include Article 25 (2): "Any agreement reached should be implemented notwithstanding any time limits in the domestic law of the Contracting State".

Multilateral MAPs have not yet been implemented in Chile.

The Chilean IRS issued guidelines for implementing MAPs in Chile in 2022.

8.2 Application Deadlines

As a general rule, a MAP must be triggered within the term indicated in the treaty, unless the latter does not specify a term for such purpose, in which case, the MAP may be initiated at any time. In all cases, the Chilean IRS guidance indicates that it is necessary to take into consideration the statute of limitations established in Chilean laws. The latter is relevant as the Chilean Tax Code allows a refund request for overpaid taxes for a three-year term, counted as from the time of payment or the final judgment in the matter.

8.3 Mandatory Binding Arbitration

Where a MAP is not successful in solving a matter, there is no compulsory arbitration in treaties entered into by Chile.

As a general rule, Chile has no obligation to reach an agreement, except in the case of Article 4 which refers to the double residency of individuals. Nevertheless, the contracting states must act in good faith in order to reach a solution, as stated in the Vienna Convention on the Law of Treaties.

Chile has also entered into several conventions to reciprocally promote and protect foreign investment, mainly with its commercial partners, following a free trade agreement. According to such foreign investment conventions, in the case of a dispute between the State of Chile and a foreign investor, the matter may be subject to international arbitration. In this regard, most of the treaties state that the dispute will be filed before the International Centre for Settlement of Investment Disputes (ICSID) based in Washington, DC in the USA, which functions under the World Bank.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Chile has a specific provision regulating APAs, contained in Article 41 E No 7 of the Income Tax Law, which expressly authorises the Chilean IRS to enter into APAs with taxpayers.

The Chilean APA programme allows taxpayers to agree with the Chilean IRS on the transfer pricing methodology and conditions applicable to future related-party transactions for a period of up to three years, with the possibility of renewal. The APA covers specific intercompany transactions and is binding on both the Chilean IRS and the taxpayer for the agreed period, subject to material changes in facts and circumstances.

This provision was amended in 2025, establishing a procedure to request an APA and introducing the possibility of submitting a consultation for entering into an APA. The taxpayer interested in proposing an APA may submit a preliminary enquiry to the Chilean

IRS, which will analyse the enquiry and may request clarifications, if appropriate. The Chilean IRS will communicate the viability of the APA within two months following the date of submission of the request. In addition, the law established the possibility of rolling back an APA, giving it retroactive application.

9.2 Other Mechanisms

Advance Rulings

Taxpayers have the possibility to request an advance ruling from the Chilean IRS to confirm a tax position or interpretation. This can be exercised in three ways:

General consultations on a no-name basis

This option is available to all taxpayers, whether they are personally and directly involved or whether they have economic interest in the transaction or not, allowing any taxpayer to request a ruling to interpret a tax law. Under this scenario, the answer provided by the tax authority will not be binding for the taxpayer. However, the Tax Code sets forth a provision in Article 26 which states that no retroactive collection applies when the taxpayer has applied, in good faith, a certain interpretation issued by the national or regional commissioners sustained in an official interpretation, which would include a specific ruling.

GAAR/SAAR consultation on a no-name basis

This option is also available for all taxpayers, whether they are personally and directly involved or have an economic interest in a transaction or not. This alternative allows any taxpayer to ask if a transaction or series of transactions may fall under the GAAR. As in the case above, the tax authority will also provide an answer to the consultation under a theoretical and general approach. In this scenario, the answer provided by the Chilean IRS will not be binding.

GAAR/SAAR specific consultation disclosing the name of the taxpayer and providing details of the transaction

Taxpayers may also request a ruling, providing all the relevant information of a transaction, if they are personally and directly involved in such transaction. In this case, the Chilean IRS will rule in a specific case with all the relevant information of the taxpayer on hand – thus, the answer provided will be binding, provided that the facts of the actual transaction are identical to those presented to be ruled on by the tax authority.

Collaborative Relationships

The Chilean IRS's large taxpayer unit administers a new tax sustainability programme for large domestic and multinational taxpayers.

Under this programme, large taxpayers have access to dedicated account managers, and can obtain informal pre-clearance on significant transactions, as well as engage in periodic compliance review meetings with the Chilean IRS.

While the programme does not provide the same level of formal certainty as an APA or advance ruling, it facilitates a more transparent and predictable compliance environment.

Foreign Financial Institutions

It is possible to register foreign financial institutions (FFIs) before the tax authority, in order to secure a reduced tax rate applicable to interest payments made abroad.

Under domestic law, the WHT applicable to interest paid from Chile to countries abroad is 35%, while this tax is reduced to 4%, regardless of the application of a tax treaty, to interest arising from loans granted by a bank or a foreign or international financial institution, whether or not the financial institution in question is related to the taxpayer.

A voluntary registry of FFIs was created in 2008 in order to register these institutions, so that the Chilean debtor could have certainty that the tax to be withheld would be at the reduced 4% tax rate. Notwithstanding the above, those entities that meet the requirements to be deemed an FFI are entitled to the 4% reduced tax rate, even if they are not registered. However, once an FFI is registered before the tax authority, the latter is not able to challenge the 4% WHT, thus reducing the possibility of a dispute over the applicable tax rate.

Tax Invariability Regime

The bill of law recently sent to Congress proposes to create a new tax invariability regime applicable to foreign and domestic investors developing mining,

industrial, forestry, energy, infrastructure, telecommunications, R&D, medical, or scientific projects, with a minimum investment amount of USD50 million.

Foreign investors entering into a foreign investment contract under this regime will be entitled to a total effective income tax burden at a rate of 35% for 25 years, counted from the commencement of operations of the respective company. The regime additionally provides for the maintenance of unchanged VAT and the customs tariff regime applicable to the importation of capital goods, throughout the period required to complete the agreed investment. It also contemplates the unchanged maintenance of rules on asset depreciation, loss carry-forwards, and organisation and start-up expenses.

For mining projects, the regime provides for special stability rights with respect to the mining royalty, new sector-specific taxes for mining activities, and amendments to exploitation and exploration concession fees.

CHINA

Law and Practice

Contributed by:
Mei Zhang
DaHui Lawyers

Contents

1. Sources and Principles p.107
1.1 Domestic Sources of International Tax Law p.107
1.2 Hierarchy of Sources p.107
1.3 OECD Model/United Nations Influence on Treaty Practice p.108
1.4 Multilateral Instrument p.108

2. Territoriality, Residence and Permanent Establishment p.108
2.1 General Principle of Territorial Taxation p.108
2.2 Tax Residence of Individuals p.109
2.3 Taxation of Resident Individuals p.109
2.4 Taxation of Non-Resident Individuals p.110
2.5 Tax Residence of Legal Entities p.111
2.6 Definition of Permanent Establishment p.111

3. Taxation of Cross-Border Income p.112
3.1 Income From Immovable Property p.112
3.2 Business Profits p.112
3.3 Passive Income p.112
3.4 Capital Gains p.113
3.5 Employment Income p.113
3.6 Other Income p.114

4. OECD/G20 Global Tax Reform p.115
4.1 Pillar One – Amount B p.115
4.2 Pillar One – Amount A p.115
4.3 Pillar Two p.115
4.4 Specific Features or Deviations of Pillar Two p.115
4.5 Digital Services Tax p.115

5. Anti-Avoidance and Anti-Evasion Measures p.116
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.116
5.2 Anti-Avoidance Mechanisms p.117
5.3 Blacklists and Non-Cooperative Jurisdictions p.118
5.4 Reporting Obligations and Disclosure Regimes p.118
5.5 Role of Tax Authorities and Enforcement Measures p.118

6. Penalties and Sanctions p.119
6.1 Tax Penalties p.119
6.2 Criminal Penalties p.119
6.3 Interaction Between Tax and Criminal Procedures p.120

7. Administrative Co-Operation p.121
7.1 Legal Framework for Administrative Co-Operation p.121
7.2 Exchange of Information Clauses in Tax Agreements p.122
7.3 Other Forms of International Tax Collaboration p.122

8. Mutual Agreement Procedures and Arbitration p.122
8.1 Availability and Legal Basis p.122
8.2 Application Deadlines p.122
8.3 Mandatory Binding Arbitration p.123

9. Dispute Prevention p.123
9.1 Advance Pricing Agreements p.123
9.2 Other Mechanisms p.123

DaHui Lawyers Combining in-depth knowledge of Greater China's legal and business environment with extensive international experience, DaHui provides innovative and practical legal solutions to clients across a broad range of industries and practice areas. The firm's client base includes, among others, the most well-known multinational companies operating in the Greater China Region and the largest Chinese Internet and media platforms. DaHui knows how to work seamlessly with in-house teams and co-counsel to structure, negotiate and close complicated cross-border transactions and resolve challenging multi-jurisdictional disputes in the most efficient way.

Author



Mei Zhang is a partner in DaHui Lawyers' tax team, with more than 16 years' experience in PRC and US tax, providing consulting and compliance services to clients in different industries, including finance, technology media and communications (TMT), internet, automobile manufacturing and biopharmaceuticals. She advises many multinational companies investing in China with tax matters relating to investment, restructuring, M&A, cross-border transactions, accounting and business consulting, etc. Mei also advises HNW individuals, and provides US tax declaration and compliance services for US companies and individuals. Before joining DaHui, she worked for Ernst & Young in New York and Beijing.

DaHui Lawyers

37/F China World Office 1
1 Jianguomenwai Avenue
Beijing 100004
China

Tel: +86 10 6535 5888
Email: info@dahuilawyers.com
Web: www.dahuilawyers.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The international tax law applicable in Mainland China is derived from a combination of domestic and international sources of authority.

The domestic legal framework for international taxation primarily consists of the following:

- Constitutional provisions – The Constitution provides the fundamental legal basis for the state's tax sovereignty.
- Tax statutes – Key legislation, such as the Law of the People's Republic of China on the Administration of Tax Collection ("PRC Tax Collection and Administration Law") is a foundational law for issues regarding tax collection and administration. It governs the levy and payment of taxes, protects both national tax revenue and taxpayers' rights, and forms the essential domestic legal basis for implementing international tax rules. Furthermore, international taxation-related provisions, such as the anti-avoidance clauses in the Corporate Income Tax Law of the People's Republic of China ("PRC CIT Law") and the Individual Income Tax Law of the People's Republic of China ("PRC IIT Law"), also form the foundation of China's international tax framework.
- Administrative rules and interpretations – Detailed implementation is guided by administrative tax circulars, rules, and interpretative documents issued by the State Taxation Administration ("STA"). These documents provide the practical operational guidelines for applying both domestic tax laws and international tax agreements.

China's international tax obligations and co-operation frameworks originate from the following instruments:

- Bilateral double taxation agreement ("DTA") – China has established an extensive treaty network by signing comprehensive DTAs with over 100 countries and regions.
- Special regional arrangements – Reflecting the "one country, two systems" principle, the Mainland signed special double taxation arrangements with the Hong Kong Special Administrative Region ("SAR") and the Macao SAR. These are functionally equivalent to DTAs and facilitate cross-border tax co-ordination within the nation.
- Multilateral tax conventions – China's active participation in international tax conventions has established a vast framework that facilitates cross-border tax co-ordination and prevents tax base erosion.

Case law does not feature prominently within the tax law system of China, a civil law country.

1.2 Hierarchy of Sources

In academic discussions of international tax law, its sources are generally categorised into the following four types:

- DTAs – among the four sources of international tax law, bilateral and multilateral tax treaties are the most substantive.
- Treaties and agreements – legal norms governing global tax co-ordination within other international conventions, treaties and agreements, such as in trade agreements or treaties of friendship, commerce and navigation.
- International customary tax law – this refers to universally accepted practices that serve as the unwritten rules of conduct in international tax relations.
- Soft law – normative documents endorsed by international organisations.

Whereas domestic tax law regulates tax collection and the relationship between the state and taxpayers (domiciled and foreign taxpayers), international tax law primarily governs the co-ordination of taxing rights between states.

International and domestic tax law are functionally interdependent.

International tax law takes precedence over domestic tax legislation. Article 58 of the PRC CIT Law and Article 91 of the PRC Tax Collection and Administration Law explicitly stipulate that if a tax treaty or agreement involving the People's Republic of China and a foreign country contains provisions different from those of the

aforesaid laws, the provisions of the treaty or agreement will prevail. This establishes a binding principle of treaty precedence within the Chinese legal system.

In practice, however, international tax law relies on domestic law for its enforcement and operational effect. Domestic legislation provides the essential procedural and administrative framework. For instance, the application of preferential withholding rates under DTAs or the implementation of the Automatic Exchange of Information ("AEOI") under multilateral conventions must be enforced through specific domestic rules and procedures. The PRC Tax Collection and Administration Law, along with a series of provisions on the withholding of tax on China-sourced income, exemplifies how domestic law operationalises and facilitates the smooth functioning of international obligations.

Thus, the relationship is one of normative supremacy of international law, coupled with practical dependence on domestic legal machinery for implementation.

1.3 OECD Model/United Nations Influence on Treaty Practice

The terms and core principles of China's DTAs are consistent with the OECD Model Tax Convention and the UN Model Double Taxation Convention. However, in their practical implementation, Chinese tax authorities have adopted more stringent interpretations and requirements in specific areas, as detailed below.

- Stricter "beneficial owner" ("BO") criteria: China's domestic tax circulars impose more rigorous conditions for claiming treaty benefits than those suggested in the OECD Commentary. For instance, according to the Circular on Issuing the Agreement between the Government of the People's Republic of China and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income and Interpretations on the Clauses of the Protocols thereof, a non-resident enterprise must qualify as the BO of income, such as dividends, interest, or royalties, to be eligible for preferential withholding tax rates. This requirement has been further tightened by the Announcement of the State Administration of Taxation on Issues concerning the Beneficial Owner in Tax Treaties (Announcement of the State Administration of Taxation [2018] No 9, or "Circular 9"). Circular 9 stipulates that to be recognised as a BO, an entity must not only have control over the income and related assets but must also conduct substantive business operations. It also provides a list of negative indicators that are used to assess whether an entity lacks the substance to be a BO.
- Additional holding period requirement for dividend benefits: While the OECD Model Convention states that it is at the discretion of the contracting states to include or exclude a condition requiring a company receiving dividends to own at least 25% of capital for a designated period before distribution, China's interpretation is explicitly stricter. According to the Circular of the State Administration of Taxation on Relevant Issues Concerning the Implementation of Dividend Clauses in Tax Treaties, to avail itself of the preferential DTA rate on dividends (eg, the 5% rate for a 25% or greater shareholding), the foreign recipient company must have held the equity interest in the Chinese company continuously for at least 12 months prior to the dividend declaration. This imposes a concrete holding period prerequisite not universally required by the model convention.

1.4 Multilateral Instrument

The PRC was an early participant in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"), having signed it during the first signing ceremony in 2017. China deposited its instrument of ratification for the MLI with the OECD on 25 May 2022. Following the standard procedural interval, the MLI entered into force in China on 1 September 2022.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

China's tax jurisdiction is founded on a dual principle: residence-based jurisdiction and source-based jurisdiction. This means the tax obligations of a taxpayer are determined by either their resident status in China or the source location of their income, with special rules applying to the Hong Kong and Macao SARs.

Residence-Based Taxation (Worldwide Income)

- Tax resident enterprise ("TRE"): As stipulated in Article 3 of the PRC CIT Law, a TRE (broadly defined as an enterprise established under Chinese law or with effective management in China) is subject to corporate income tax ("CIT") on its worldwide income.
- Tax resident individual: According to Article 1 of the PRC IIT Law, a resident individual (defined as one domiciled in China, or one without a domicile but who has resided in China for 183 days or more in a tax year) is subject to individual income tax ("IIT") on worldwide income.

Source-Based Taxation (China-Sourced Income)

Non-TREs and non-resident individuals: China exercises taxing rights over all income derived from sources within Mainland China, irrespective of the taxpayer's residence status.

- A non-TRE with an establishment or place in China is taxed only on income attributable to that establishment. A non-TRE without such an establishment, or whose China-sourced income lacks a taxable nexus to its establishment, is subject to withholding tax on the non-TRE's China-sourced income.
- A non-resident individual (as defined under the PRC IIT Law) is generally subject to IIT only on income sourced from within China.

Special Administrative Regions

The Hong Kong SAR and Macao SARs maintain independent tax systems under the "one country, two systems" principle. To resolve potential cross-border tax conflicts and avoid double taxation, the Mainland has entered into special tax arrangements with each SAR, which function analogously to DTAs. Although the PRC and Taiwan have signed a similar arrangement, it has not yet come into effect.

2.2 Tax Residence of Individuals

Under the PRC IIT Law and its implementing regulations, an individual is a Chinese tax resident if they meet either of the following two criteria:

- By domicile: An individual is "domiciled" in mainland China if they have a permanent registered address, family ties, or economic interest in the PRC. "Domiciled" individuals in Mainland China are tax residents. For example, if an individual resides overseas due to school, work, family visits, or tourism, and after completing their matters they return to stay in Mainland China, they are a "domiciled" individual.
- By duration of residence: An individual without a domicile in Mainland China but who has resided there for 183 days or more in aggregate within a tax year is a Chinese tax resident.

2.3 Taxation of Resident Individuals

Chinese tax residents are liable for IIT on their worldwide income. The primary mechanism to alleviate double taxation arising from foreign-sourced income is the Foreign Tax Credit ("FTC") system, which is subject to the following rules.

Taxation Methods

China implements a hybrid IIT system that adopts comprehensive, business and categorical tax rates.

- Comprehensive income: Includes wages and salaries, remuneration for personal services, and author's remuneration and royalties, which are consolidated for tax calculation on an annual basis. The amount of taxable income is calculated by subtracting the basic expense of RMB60,000, itemised deductions for specific expenditures, and other deductible items from the balance of annual income. The amount of taxable income is subject to progressive tax rates ranging from 3% to 45%.
- Business income: This is income from production and business operations of individual, industrial and commercial households, investors of sole proprietorship enterprises, partners of partnership enterprises, etc. It is calculated on an annual basis, and the amount of taxable income is the remaining gross income after costs, expenses and losses are deducted, subject to progressive tax rates ranging from 5% to 35%.
- Categorical income: This includes interest, dividends and bonuses, property leasing income, property transfer income and contingent income. Such income is not consolidated with domestic comprehensive income and is separately taxed on a transactional basis at a flat tax rate of 20%.

Foreign Tax Credit ("FTC") Mechanism: Core Principle and Calculation

Core principle

For the income obtained by a resident individual from outside the territory of China within a single tax year, the amount of income tax that has been levied and paid outside the territory of China under the tax law of the country (region) from which that income is sourced, may be used to offset the amount of IIT payable by the individual for the current tax year, to the extent of the offset quota.

Calculation of the FTC Limit

The overall FTC limit for income from a specific country (region) is the sum of the limits calculated for each category of income sourced from that country:

- FTC limit for comprehensive income = (total IIT payable on global comprehensive income) × (comprehensive income from the specific country/total global comprehensive income);
- FTC limit for business income = (total IIT payable on global business income) × (taxable business income from the specific country/total global taxable business income);
- FTC limit for other classified income = the actual IIT payable in China on that specific classified income from the country; and
- total FTC limit for the country = the sum of the three amounts above.

2.4 Taxation of Non-Resident Individuals

In accordance with the principle of territorial jurisdiction and relevant tax laws, non-resident individuals are only liable for IIT on income sourced from Mainland China, under the following rules.

Scope of Taxable Income and Sourcing Rules

The following broad categories of income derived by non-resident individuals are deemed to be sourced from Mainland China and are therefore taxable.

- wages and salaries: income attributable to employment services performed within China;
- remuneration for personal services: income from providing services (eg, consulting, performances) within China;
- author's remuneration: remuneration paid or borne by domestic enterprises, public institutions and other organisations;
- royalties: income arising from the licensing of intangible property for use within China;
- interest, dividends and bonuses: income obtained from domestic enterprises, public institutions, other organisations or resident individuals;
- property leasing income: income from leasing property for use within China;
- property transfer income: gains from the transfer of real property located in China or other properties (eg, equity in Chinese resident enterprises); and
- contingent income: income from prizes, awards, or lotteries obtained within China.

Several nuances are involved in the above categories. For example, for individuals serving as directors, supervisors and senior management personnel of domestic resident enterprises, directors' fees, supervisors' fees, wages, salaries, and other similar remuneration (including multi-month bonuses and equity incentives) paid or borne by domestic resident enterprises are regarded as income sourced from Mainland China, regardless of whether the individual performs duties within Mainland China.

Tax Calculation Methods

Non-resident individuals are not eligible for annual final settlement of comprehensive income. Tax is levied item by item on a monthly or transactional basis, and withheld and remitted by withholding agents.

- Wages and salaries: A monthly deduction of RMB5,000 is allowed, subject to the monthly tax rate table for non-resident individuals (progressive tax rates ranging from 3% to 45%).
- Remuneration for personal services, author's remuneration and royalties: The taxable income is the amount of income per transaction, subject to progressive tax rates ranging from 3% to 45%. Among them, the income amount of remuneration for personal services and royalties is the balance of gross income after deducting 20% for expenses; the income amount of an author's remuneration is calculated by deducting 20% for expenses from 70% of the gross income.

- Other income (interest, dividends, property income, etc): This is levied on a transactional basis and is generally subject to a flat tax rate of 20%.

2.5 Tax Residence of Legal Entities

In accordance with the PRC CIT Law, the tax-resident status of a legal entity in Mainland China is determined based on either of the following two criteria.

- place of registration: enterprises, public institutions, social organisations, and other income-generating organisations legally established within Mainland China; or
- location of managing institution: refers to enterprises that are established in foreign countries (regions) but hold their "actual management institutions" in Mainland China (the term "actual management institution" refers to organisations that comprehensively manage and control the production and operation, staff, accounting, property, and other aspects of the enterprise).

2.6 Definition of Permanent Establishment

China's definition of a permanent establishment ("PE") operates under a dual framework: a broader concept under domestic law and a more specific, treaty-based concept that aligns with international norms (ie, the OECD Model Tax Convention) while protecting its source taxation rights.

Domestic Law Foundation: "Establishments or Places"

According to Article 2 of the PRC CIT Law and Article 5 of its Implementation Rules, there are two main types of institutions or establishments registered by non-resident enterprises in Mainland China:

- fixed places of business – these encompass a wide range of physical locations used for production or business operations, such as management offices, factories, service provision sites, construction/installation projects, etc; and
- dependent agents – a non-resident enterprise may also create a taxable presence by authorising an agent in China to habitually conclude contracts or perform core functions on its behalf.

Establishing such an "institution or place" under domestic law creates a general tax nexus but does not automatically equate to forming a PE as defined in a DTA. The PE threshold under treaties is typically more stringent.

Treaty Practice

While China's DTAs incorporate core principles from the OECD Model Tax Convention, the OECD Model positions on key PE issues more closely resemble the UN Model, favouring rules that better protect the taxing rights of source countries (like China) where income arises. The key distinctions are evident in two areas:

- Service provision through personnel clause – Regarding special types of PEs, the UN Model Tax Convention adds a category of service-type PE, which stipulates that "the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue within that country for a period or periods aggregating more than six months within any twelve-month period". Most tax treaties signed by China with foreign countries refer to the provisions of the UN Model Tax Convention on this clause.
- Construction sites and related activities – The OECD Model Tax Convention stipulates that "the term 'permanent establishment' includes a building site or construction or installation project, but only if such site or project lasts more than twelve months". The UN Model Tax Convention lowers the 12-month designated period to six months and includes "assembly projects and supervision and management activities related to building sites, construction, assembly or installation projects" as possible conditions for determining the existence of a PE, to better safeguard the interests of developing countries. Most tax treaties signed by China adopt the six-month or 12-month standard, with some exceptions for specific treaty partners.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

In China, income from immovable property (such as real estate and land) is levied according to the taxpayer's status (resident/non-resident) and type (individual/enterprise).

IIT on Rental Income

For China-domiciled individuals

Rental income from real estate rentals within or outside China must be declared and taxed in China and is subject to policies stipulated in the "property rental income" category. Rental includes but is not limited to profits from the leasing of buildings, granting of rights to land usage, machinery and equipment, motor vehicles, ships, and other properties.

- Tax rate: The statutory tax rate is 20%.
- Calculation of taxable income:
  (a) for each income ≤RMB4,000, taxable income = income – RMB800 (fixed expenses); and
  (b) for each income exceeding RMB4,000, taxable income = income amount × (1 – 20%).

For non China-domiciled individuals

Only rental income from China-based rentals is taxable. A statutory rate tax of 20% applies to each payment and is withheld by the payer.

CIT on Rental Income

For TREs

Income generated from a property (regardless of whether it is from domestic or foreign sources) must be included in the total amount of annual taxable income and taxed at a standard rate of 25% (preferential tax rates may be applied to qualified enterprises).

For non-TREs

Tax procedures depend on the enterprise's PE status in China and whether the rental income is effectively tied to its operations.

- Scenario 1 (unrelated income): Rental income is considered income sourced from within China and subject to a 10% withholding tax rate if the enterprise does not qualify as a PE or if the rental income is not attributable to the PE. The tax will be withheld and remitted by the payer at the time of payment.
- Scenario 2 (related income): Rental income attributable to the PE must be included in the establishment's profits and taxed at a rate of 25%.

3.2 Business Profits

TREs are subject to CIT on their worldwide income, which includes all operating profits derived from both within and outside China. This income is consolidated and taxed at the standard CIT rate of 25% unless the enterprise qualifies for and applies specific preferential tax policies.

The CIT liability on operating profit of a non-TRE depends on whether it has a PE in China and whether its China-sourced income is effectively connected to that PE:

- Income effectively connected to a PE – Profits attributable to a PE in China constitute the taxable income of that PE. This income is taxed on its net profit (after allowable deductions) at the standard CIT rate of 25%.
- Income not effectively connected to a PE – If a non-TRE has no PE in China, or if specific China-sourced income is not effectively connected to an existing PE, such income is generally subject to withholding tax at a rate of 10% on the gross amount. The tax is generally withheld and remitted by the payer.

3.3 Passive Income

In China, the taxation of passive income differs for resident and non-resident taxpayers. The passive income of resident taxpayers is normally included in their current/yearly taxable income, while the passive income of non-resident taxpayers is typically subject to withholding tax at source, where the payer is responsible for filing and remitting the relevant tax.

Under Chinese tax law, withholding tax is a mandatory legal obligation. According to the PRC CIT Law, non-TREs receiving China-sourced income in the form of dividends, interest and royalties, are usually subject to a 10% withholding tax rate. The payer must withhold and remit this tax on behalf of the enterprise upon each payment. Although legal withholding agents often

handle the filing on behalf of non-resident taxpayers, non-residents receiving China-sourced income are ultimately liable and should ensure compliance.

Currently, Mainland China has signed bilateral DTAs with more than 100 countries and regions. These treaties typically offer more favourable arrangements for withholding tax rates on passive income.

- Dividends: If the recipient is a tax resident of a contracting state and usually meets a certain shareholding ratio (such as 25%), the withholding tax rate can usually be reduced to 5% or lower.
- Interests: Tax rates can be reduced to 8%, 7% or lower.
- Royalties: The tax rate can be reduced to 7%, 6% or lower.

3.4 Capital Gains

China does not levy a separate capital gains tax. Instead, gains from the disposal of assets are taxed as part of ordinary taxable income under the CIT or IIT regimes.

Taxation of Individuals

Tax-resident individuals

Income received by resident individuals from the transfer of real estate within China is subject to an IIT rate of 20% under the "property transfer income" category. However, China has recently extended the tax exemption for individuals/families who have owned their only common house for more than five years and are transferring ownership. Taxable income is the balance after deducting the original value of the property and reasonable expenses from the transfer income. Income from the transfer of shares in domestic listed companies is temporarily exempt from IIT. On the other hand, income derived from the transfer of equity in non-listed companies is taxed at a rate of 20%.

Non-resident individuals

If a non-resident individual receives capital gains sourced from the transfer of real estate, equity or other property within China, procured capital gains are subject to the IIT rate of 20%, withheld by the payer at source.

Taxation of Enterprises

TREs

If a TRE receives capital gains from the transfer of various assets, the amount received should be included in the enterprise's annual taxable income and subject to a uniform CIT rate of 25% (though if eligible for preferential treatment, the corresponding preferential tax rate may apply).

Non-TREs

For non-TREs that have no PE in China, or whose capital gains are not actually connected with their PEs in China, income from the transfer of real estate, equity, or other property in China is subject to withholding tax at a rate of 10%. If the capital gains are attributable to a PE, they should be included in the PE's annual taxable income and taxed at a rate of 25%.

3.5 Employment Income

Basic Taxation Rules

For individual residents

Income from wages and salaries, as well as labour services, belong to comprehensive income that is subject to a progressive tax rate with seven levels, ranging from 3% to 45%. For labour service remuneration, the taxable income is generally equivalent to 80% of the gross receipt. Moreover, the basic standard deduction for wages and salaries is RMB60,000 per year, in addition to other special deductions. Comprehensive income is declared and paid in accordance with monthly withholding and annual settlement of IIT.

For non-resident individuals

Income from wages and salaries, as well as from labour services, is subject to a progressive tax rate with seven levels, ranging from 3% to 45%. For labour service remuneration, the taxable income amount is generally equivalent to 80% of the gross receipt, and the basic standard deduction for wages and salaries is RMB5,000 per month. If a withholding agent exists, it must withhold and pay the tax on behalf of the individual on a per-month or per-transaction basis, with no annual reconciliation required.

Short-Term Assignment

For foreign-sourced income generated from labour services earned by Chinese-domiciled individuals, their foreign-sourced income from the secondment

must be consolidated with domestic income for annual tax reconciliation. A foreign tax credit is available to mitigate double taxation.

If a Chinese entity bears the costs of salaries or remuneration of such dispatched employees, or is associated with an overseas institution, it may be deemed the withholding agent in China. In such cases, the Chinese entity may be required to withhold IIT monthly for the total amount of the dispatched employees' domestic and overseas compensation, rather than having the individual pay taxes on their overseas income during the annual tax reconciliation.

Cross-Border Employment

When Chinese companies hire foreign employees, they need to accurately determine the employees' tax residency status.

If a foreign national meets the criteria for a resident individual and has a domicile in China, then all their income derived from both within and outside China (ie, global income) is subject to IIT. However, if they do not have a domicile in China, as long as the consecutive years in which they have resided in China for a cumulative total of 183 days are less than six years, their income derived from outside China and paid by overseas entities can enjoy tax exemption after filing with the competent tax authority. If, during the aforementioned six-year period, they are absent from China for more than 30 days in any given year, the year in which they have resided for a cumulative total of 183 days in China will be interrupted and the calculation will restart. Foreign nationals who reside in China for 183 days or more per year over six consecutive years will assume the same tax liability as that of a resident individual based on the domicile criterion. In conclusion, all income that is generated from within or outside China is subject to taxation in China.

Foreign nationals who are non-domiciled individuals are only required to pay IIT on income derived from within China. If a foreign national resides in China for no more than 90 days in a calendar year, their China-sourced income paid by an overseas employer with no establishment or place of business in China is exempt from tax. However, it is important to note that this provision only applies to wages and salaries. The 90-day period is more like a tax threshold than a full tax exemption; if the foreign national stays in China for longer than 90 days, their China-sourced income is subject to full taxation, and any previous income treated as exempt within that same year must be retrospectively declared and taxed.

Remote Work

China's domestic tax law currently has no specific provisions addressing the novel tax nexus issues posed by remote work arrangements. The tax treatment is generally assessed based on a number of factors, including tax residency status, place of service provision, and DTAs.

3.6 Other Income

Chinese tax law specifies certain types of miscellaneous income that are not prominently featured in the OECD Model Tax Convention.

Other Income not Listed Above Under the PRC IIT Law

- Author's remuneration: The OECD Model Convention does not establish a separate "author's remuneration" category for individuals. The PRC IIT Law lists an author's remuneration as a sub-item of "comprehensive income", and specifically refers to income made from the publication or dissemination of works like books, newspapers, etc. This is subject to progressive tax rates ranging from 3% to 45%.
- Incidental income: The OECD Model Convention does not list "incidental income" separately; related income is usually included in the "other income" catch-all clause. PRC IIT Law categorises incidental income separately. Accordingly, personal prizes, winnings, lotteries, random lottery prizes, and unexpected gifts are subject to a 20% proportional tax rate on a per-transaction basis.

Other Income not Listed Above Under the PRC CIT Law

- Income from donations received: While the OECD Model Convention does not specifically list "income from donations received", the Implementation Rules of the PRC CIT Law explicitly classify "income from donations received" as a sub-item of "other income". Monetary and non-monetary

assets received gratuitously from other enterprises, organisations or individuals are thus subject to a tax rate of 25% for resident enterprises. Non-resident enterprises may be subject to withholding tax. This income is recognised on the date of actual receipt.

- Subsidies, penalties and exchange gains: Although the OECD Model Convention does not list these types of income separately, the implementation rules of the PRC CIT Law specifically include them under "other income":
  (a) If enterprises receive fiscal funds from the government at the county level or above, the government subsidy can be treated as non-taxable income. If these conditions are not met, they are considered taxable income.
  (b) The CIT treatment of liquidated damages is executed two ways. From the perspective of the recipient, the total amount procured from liquidated damages should be included in taxable income and is subject to CIT. From the perspective of the payer, liquidated damages can be deducted before tax if the payer obtains genuine, legal and relevant pre-tax deduction vouchers.
  (c) Exchange gains should be considered taxable income upon accrual (regardless of whether they are realised), and conversely, exchange losses are deductible when incurred (regardless of whether they are realised).

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

China has not yet issued domestic laws or regulations regarding Amount B, nor has it incorporated the formulaic pricing method for Amount B into its domestic transfer pricing ("TP") administration system.

4.2 Pillar One – Amount A

As a beneficiary and staunch defender of globalisation, China adopts a supportive and co-operative attitude towards Amount A of Pillar One.

On the one hand, China firmly believes that the growth of the global economy depends on economic globalisation and digitalisation. As such, China strongly advocates for international tax policies conducive to development and recognises that the best way to address tax issues stemming from economic digitalisation is through multilateral negotiations. Thus, China opposes unilateral measures that could trigger trade wars and has consistently acted as a mediating force, with the intention to promote open dialogue and prevent conflict with other nations. On the other hand, over years of international tax practice, China has championed the Market Contribution theory. This underscores the market's crucial role in the cross-border profit distribution of multinational enterprises (MNEs). To protect the market jurisdictions' sovereign taxing rights, China promotes equitable tax yields. From this perspective, China's leading international tax philosophy is consistent with the intentions set out in Pillar One.

Overall, only a few Chinese companies meet both the EUR20 billion revenue threshold and the 10% profitability ratio set out in the agreement. Those that do are mainly concentrated in sectors such as oil, banking and insurance, all of which fall under exclusions of the agreement. However, certain companies (primarily internet enterprises) may be affected to some extent. For example, according to the 2023 European Union Tax Observatory report on Pillar One, China now represents 19.1% of Amount A-covered groups and 17.3% of total Amount A profits, accounting for approximately EUR15.8 billion in taxable profits. Even though China occupies 13 spots out of 68 covered MNEs, ranking second in the world, many Chinese companies still remain unaffected by Amount A.

4.3 Pillar Two

China has not yet implemented the global minimum tax stipulated in Pillar Two, nor has it specified a specific implementation date.

4.4 Specific Features or Deviations of Pillar Two

China has not yet implemented the global minimum tax.

4.5 Digital Services Tax

China eschews a special tax category for digital products in favour of adapting the current fiscal framework to the unique characteristics of the digital economy.

The tax regime covers digital products through existing tax categories such as value-added tax ("VAT"), CIT and IIT, and implements differentiated tax incentive policies.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

The Chinese legal framework distinguishes tax fraud, tax evasion and tax avoidance from one another by designating each with different legal consequences. The cross-border manifestations of such conduct present unique challenges for tax administration.

Tax Fraud

China defines tax fraud as the act of taxpayers obtaining tax refunds from the state through false declarations or other deceptive means. Core elements include fabricating facts and fraudulently obtaining tax refund eligibility. Examples of tax evasion such as taxpayers who make false declarations by forging accounting books and vouchers, signing fake contracts to conceal income, falsely reporting expenses, and fraudulently obtaining tax benefits, constitute "deception or concealment" under criminal law.

Cross-border identification

- Fabricated export refunds: Overstating export prices, falsely declaring goods to qualify for higher refund rates, or using untaxed goods to claim refunds.
- Circular trading schemes: Repeatedly exporting and importing the same goods (often repackaged or misclassified) to fraudulently generate export tax refunds and exploit import duty exemptions.
- Fraudulent use of invoices: Utilising false or illegally obtained VAT special invoices to substantiate fraudulent export refund claims, often in conjunction with other schemes.

Tax Evasion

This refers to the act of evading tax payments by means of deception and concealment such as making false declarations or failing to declare taxes. Characteristics such as subjective intent and illegality are utilised to gauge the severity and scope of the crime.

Cross-border identification

- Use of offshore structures: Establishing entities (eg, companies, trusts) in secret jurisdictions to conceal income, assets or ownership.
- Document fraud: Creating or altering financial documents, contracts or invoices to misrepresent the nature or terms of cross-border transactions.
- Abuse of legal processes: Misusing bankruptcy, liquidation or corporate dissolution procedures to evade tax liabilities and frustrate enforcement actions.

Tax Avoidance

This refers to taxpayer(s) seeking to reduce, exempt, or postpone the payment of taxes by establishing shell companies or making other legal arrangements that have no real business purpose.

Cross-border identification

- Avoiding the definition of a PE: Because ancillary or preparatory business activities are not considered PEs, the OECD Model Tax Guidelines unknowingly leave a lacuna in the law that digital companies can utilise to avoid taxes. Furthermore, the OECD Model Tax Guidelines require a PE to possess three characteristics: physical location, relatively long duration, and substantial economic activity. However, in the digital era, companies can operate without a physical location.
- TP of intangible assets: Digital enterprises, due to the very nature of their work, rely heavily on their intangible assets, which are characterised by their high liquidity. For example, companies can register their core intellectual property ("IP") in jurisdictions that impose lower taxes, without having to move research and development personnel or physical equipment there.
- Thin capitalisation: Dividend expenses generated from equity financing are not deductible before tax, while interest expenses from debt financing are tax-deductible. Therefore, companies often increase the debt ratio between subsidiaries and the parent company to inflate interest expenses.
- Use of tax havens: Typical tax havens worldwide include the Cayman Islands, Bermuda, etc. Some

of these areas have adopted complete tax exemption policies, meaning they exempt companies from paying CIT, instead implementing a minimal financial burden mechanism based on registration and administrative fees.

5.2 Anti-Avoidance Mechanisms

China endows its tax authorities with extensive powers for tax reassessment, including audits, penalties, and special tax adjustments. To effectively address cross-border tax fraud, evasion and avoidance, China actively expands its international governance network by negotiating bilateral treaties and participating in multilateral initiatives, thereby gaining access to broader intelligence and enforcement authority.

Legal Consequences

Upon identifying fraudulent, evasive or avoidant activities through audits or other means, tax authorities will initiate enforcement procedures, which may result in the following (among other things):

- Administrative penalties – The authorities will recover unpaid taxes and impose late payment interest (0.05% per day). Additionally, a fine ranging from 50% to five times the amount of tax evaded may be levied.
- Criminal liability – If the act constitutes a criminal violation, criminal proceedings will be initiated. Penalties can be severe, with the maximum penalty for serious cases of tax fraud being life imprisonment.

Tools Against Tax Base Erosion and Profit Shifting ("BEPS")

For transactions that, while not directly illegal, erode the tax base by lacking commercial substance, the tax authorities employ specific anti-avoidance measures, the core components of which include:

- TP adjustments – If a business transaction between an enterprise and its related parties does not comply with the arm's length principle, or if the enterprise implements other arrangements that do not have a reasonable commercial purpose, the tax authorities have the right to make a tax adjustment within ten years from the tax year in which the transaction occurred.
- Controlled foreign corporation ("CFC") – Foreign-sourced profits controlled by domestic residents who retain such profits without reasonable business needs may be taxed as if the funds were distributed.
- Thin capitalisation rules – When the ratio of debt investment to equity investment received from an enterprise's related parties exceeds the prescribed standard (generally 5:1 for financial enterprises or 2:1 for other enterprises), interest expenses are no longer deductible before tax.
- General Anti-Avoidance Rule ("GAAR") – When determining whether an arrangement offers a tax benefit, the tax authorities should consider the economic substance of the arrangement, its outcome, and its impact on the enterprise, and compare it with alternative arrangements that achieve the same business objective without avoiding tax. When an enterprise and its related parties use agency or proxy arrangements to conceal related-party transactions, the tax authorities can determine related-party transactions based on economic substance.

International Tax Co-Operation

China actively strengthens its tax administration through deep engagement in the international tax governance system, primarily via three interconnected channels – expanding its treaty network, enforcing transparency standards, and implementing evolving global rules.

- Expanding DTAs network: China has built one of the world's most extensive DTA networks, with over 100 comprehensive agreements in force. Modern treaties are increasingly equipped with robust anti-abuse provisions to prevent treaty shopping and improper claims of benefits.
- Automating tax information exchange: As a committed early adopter, China has fully implemented the Common Reporting Standard ("CRS") for the automatic exchange of financial account information since 2018. It now engages in automatic information exchange with more than 100 jurisdictions, significantly enhancing transparency and its capability to detect offshore tax evasion.
- Implementing evolving international standards: China is an active participant in the G20/OECD BEPS

Project and is integrating its outcomes into domestic practice. Key implementation areas include:

(a) TP documentation – adopting the three-tiered standardised approach (master file, local file, and country-by-country report);
(b) addressing the digital economy – engaging in Two-Pillar Solution negotiations to reform the international tax architecture for the digitalised age; and
(c) dispute resolution – enhancing mechanisms for the mutual agreement procedure ("MAP") to resolve cross-border tax disputes efficiently.

5.3 Blacklists and Non-Cooperative Jurisdictions

China has not adopted a unilateral list of non-cooperative tax jurisdictions. However, in line with global efforts against BEPS, it actively monitors and scrutinises transactions involving high-risk jurisdictions, particularly those characterised as offshore financial centres or low-tax territories, to safeguard its tax base.

5.4 Reporting Obligations and Disclosure Regimes

China has established a comprehensive reporting regulatory regime to ensure tax compliance in cross-border activities, imposing specific reporting and disclosure obligations on taxpayers, financial institutions, and other intermediaries. The core pillars of this framework are outlined below.

- Related-party reporting: China has established a reporting obligation system covering taxpayers, financial institutions and other relevant entities. Enterprises with cross-border related party transactions must submit a "Report Form on Related Party Transactions" with their annual CIT settlement, disclosing the transaction parties, amounts and pricing methods. Eligible enterprises must also prepare three sets of TP documents, the main entity document, local documents, and special matters documents to prove their compliance.
- Treaty benefit claims: Non-resident taxpayers seeking to apply preferential withholding tax rates under a DTA must file the requisite forms (eg, Non-Resident Taxpayer's Claim for Treaty Benefits) with the tax authorities for reporting or advance ruling.
- Outbound payment filing: Domestic enterprises making overseas payments (over USD50,000 per time) for service fees, dividends, interest, royalties, etc, are required to complete a tax filing (record filing or tax clearance) for such outbound remittances.
- E-commerce platform reporting: Under the Regulations on Tax Information Reporting by Internet Platform Enterprises, cross-border e-commerce platforms must report the identity and transaction details of sellers on their platforms to the tax authorities every quarter, bearing legal responsibility for the accuracy of the information provided.
- CRS compliance: Chinese financial institutions are mandated to conduct due diligence on financial accounts held by non-residents and annually report the related account information to the State Taxation Administration by 31 May. China automatically exchanges this information with over 100 jurisdictions.

5.5 Role of Tax Authorities and Enforcement Measures

Chinese tax authorities are vested with extensive powers to ensure tax compliance, combat illegal activities (such as tax evasion and fraud), and monitor the fulfilment of obligations by taxpayers, withholding agents, and other relevant parties. These powers are exercised through domestic and cross-border inspections, which typically involve the examination of relevant transactions, accounts and documentation. The key investigative tools are as follows:

- Right to inspect documents – the right to access taxpayers' and withholding agents' books, accounting vouchers, statements, and other tax-related documents (including electronic documents), which may be copied and sealed; relevant information on overseas affiliated companies may be obtained through international information exchange.
- Right to conduct on-site inspections – to inspect taxable goods, commodities, or other property at taxpayers' production and business centres; to verify on-site evidence of cross-border transactions, including goods transportation, warehousing and customs declaration.

- Right to enquire – to ask taxpayers and withholding agents about issues and circumstances related to tax payment or withholding and collection of taxes, and to prepare written records of the enquiry.
- Account enquiry rights – with the approval of the director of the tax bureau (branch) at the county level or above, individuals and authorised entities may enquire about the account information of taxpayers and withholding agents in banks or other financial institutions; enquiries about the savings deposits of suspected person(s) require approval from the director of the tax bureau at the city prefecture-level or autonomous prefecture level or above.
- Right to inspect electronic data – this includes the right to inspect taxpayers' electronic information systems and to use technical means to extract and copy electronic data (but not to damage the original data or affect the operation of the system).
- Right to conduct cross-regional investigations – this embodies the right to carry out cross-regional investigations and collect evidence through the co-operation of tax authorities in different regions.
- Preservation and enforcement rights – tax preservation measures (such as freezing deposits and seizing property) can be taken against taxpayers suspected of evading tax obligations, and enforcement measures (such as auctioning property to offset tax payments) can be taken against those who fail to pay taxes on time.

6. Penalties and Sanctions

6.1 Tax Penalties

Legal Framework and Main Penalties

The PRC Tax Collection and Administration Law and its regulations are used to address most tax-related violations, and core penalties include:

- For tax evasion (such as concealing cross-border income) – the tax authorities may recover the tax owed, impose late-payment fees, and impose a fine of up to five times the amount of tax not paid (Article 63).
- For tax fraud (such as fraudulently obtaining export tax refunds) – fraudulently obtained tax may be recovered, and a fine ranging from 100% to 500% of the fraudulent amount may be charged (Article 66).
- For failure to fulfil withholding obligations (such as failure to withhold tax when paying overseas dividends) – the withholding agent may be fined between 50% and 300% of the non-withheld tax amount (Article 69).
- For those who evade, refuse or otherwise obstruct the tax authorities' inspections (such as refusing to provide cross-border information) – they may be ordered to rectify the situation and may be fined up to RMB10,000; in serious cases, they may be fined between RMB10,000 and RMB50,000 (Article 70).

The Implementing Agency

The power to impose penalties is exercised by multiple administrative departments, such as the following:

- Tax authorities – The STA and its subordinate tax authorities are responsible for investigating and punishing tax evasion, tax fraud and other tax-related violations. For enforcement actions that exceed their statutory administrative powers (eg, compulsory enforcement against property), they must apply to the people's courts for execution.
- Customs – The General Administration of Customs and its subordinate customs offices at all levels are responsible for investigating and punishing smuggling, violations of customs supervision regulations, and other similar activities.
- Co-ordinating regulatory departments – Other financial and regulatory agencies, including local commerce departments, branches of the People's Bank of China, financial regulatory bureaus, and the State Administration of Foreign Exchange, play a supporting role. They are tasked with strengthening monitoring, facilitating information sharing, and promoting regulatory co-ordination to combat tax-related offences that involve cross-border capital flows or complex financial arrangements.

6.2 Criminal Penalties

In China, most criminal penalties for tax fraud and tax evasion are described in the Criminal Law of the People's Republic of China ("Criminal Law").

Tax Fraud

Fraudulently obtaining export tax refunds constitutes a serious offence that undermines national fiscal revenue and is subject to severe legal consequences. The penalties for such acts are set out in Article 204 of the Criminal Law, summarised as follows:

- If the amount involved is large, the perpetrator(s) will be sentenced to fixed-term imprisonment of no more than five years or criminal detention, and will also be fined no less than once, but not more than five times the amount defrauded.
- If the amount involved is huge, or if there are other serious circumstances, the perpetrators will be sentenced to fixed-term imprisonment of no less than five years, but not more than ten years and will also be fined no less than once, but not more than five times the amount defrauded.
- If the amount involved is especially huge, or if there are other especially serious circumstances, the perpetrators will be sentenced to fixed-term imprisonment of no less than ten years and up to life imprisonment, and will also be fined up to five times the amount defrauded or be sentenced to confiscation of property.

Related offence: issuing false invoices

Under Article 205 of the Criminal Law, penalties for issuing false invoices are specified as follows:

- Whoever generates false VAT invoices or any other invoices to defraud a tax refund for exports or to offset tax money, will be sentenced to prison for a maximum of three years, or criminal detention, and will also be fined at least RMB20,000, but not more than RMB200,000.
- If an egregious amount of money is involved or if there are other serious circumstances, the perpetrator will be sentenced to fixed-term imprisonment of at least three years but not more than ten years, and will also be fined at least RMB50,000, but not more than RMB500,000.
- If the amount of money involved is huge, or if there are other especially serious circumstances, the perpetrator will be sentenced to fixed-term imprisonment of at least ten years, or life imprisonment, and will also be fined at least RMB50,000, but not more than RMB500,000 or be sentenced to confiscation of property.

Tax Evasion

According to Article 201 of the Criminal Law, if a taxpayer or withholding agent evades payment of tax through deception or concealment such as false declarations or failure to declare, the following penalties will apply:

- Anyone who evades a substantial amount of tax, exceeding 10% of the tax payable and over RMB10,000 but under RMB100,000, or who commits tax evasion again, after having been twice subjected to administrative sanctions by the tax authorities for tax evasion, will be sentenced to imprisonment for up to three years or detention, and will also be fined.
- Anyone who evades a huge amount of tax, exceeding 30% of the tax payable and over RMB100,000, will be sentenced to prison for three to seven years, and will also be fined.

Exemption from criminal liability

If, before the public security authorities file a case, the taxpayer has paid the outstanding taxes and delinquent payment fees and accepted administrative penalties after the tax authorities have issued a notice of tax recovery in accordance with the law, no criminal liability will be pursued. However, this does not apply to those who have been criminally punished for tax evasion or have been given more than two penalties by the tax authorities within the past five years.

6.3 Interaction Between Tax and Criminal Procedures

According to Chinese law and the division of powers, general tax-related violations are punished by the tax authorities, while tax-related crimes are handled by the judicial system. If the tax authorities determine that a tax-related violation also constitutes a crime, they should transfer the case to the public security authorities.

Legal Basis for Case Transfer

The transfer mechanism is grounded in the following key provisions:

- Article 77 of the PRC Tax Collection and Administration Law stipulates that a tax authority will transfer all cases involving a tax offence suspected of constituting a crime to the judicial system for criminal prosecution.
- Article 3 of the Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Agencies stipulates that if an administrative law enforcement agency suspects the commission of a crime when investigating illegal acts, it must transfer the case to a public security organ.
- Article 48 of the Regulations on the Procedures for Handling Tax Inspection Cases stipulates that for tax violations suspected of constituting a crime, the inspection bureau will, after approval by the director of the tax bureau, transfer the case to the public security organ along with supporting evidence.

Administrative-Judicial Co-Ordination Mechanism

Currently, tax and judicial authorities primarily communicate through the "normalised collaboration mechanism", which ensures the dual connection between administrative law enforcement and criminal proceedings.

Regarding the connection of legal procedures, existing regulations have already introduced some policies to standardise the process. For example, according to the Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Agencies, the principal leading official or the leading official in charge of the work of an administrative organ for law enforcement must plan and decide on whether to approve the transfer or not within three days of receipt of the report. Should they decide to approve the transfer, they must transfer the case to the public security organ within 24 hours; if they decide not to approve the transfer, they must record the reason in the file.

However, at the same time, there are still certain conflicts and ambiguities among the current administrative laws, regulations, rules, and normative documents. In practice, there are situations where tax authorities impose administrative penalties first and then transfer the case to the public security organs, and there are also situations where the case is transferred to the public security organs before tax administrative penalties have been imposed.

Comprehensive Collaboration Framework

A multi-layered co-ordination system has been established, comprising the following:

- Joint consultation mechanisms – Local governments have instituted regular joint meetings involving tax authorities, public security bureaus, procuratorates and the courts to address complex issues such as legal characterisation of major or novel cases (including cross-border matters) and evidentiary standards.
- Information sharing and joint enforcement– The authorities exchange data through dedicated information platforms and conduct co-ordinated investigations and evidence collection for major cases, enhancing enforcement effectiveness.
- Oversight and accountability – Higher-level authorities supervise compliance with transfer obligations, preventing failures to transfer, the substitution of administrative fines for criminal penalties, and the obstruction of inter-agency co-ordination.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

In China, the legal basis for international tax co-operation is grounded in domestic laws, international treaty standards and bilateral agreements.

Domestic Law: the Legal Framework for Operational Procedures

- Both the PRC CIT Law and PRC Tax Collection and Administration Law stipulate that if a cross-border tax treaty or agreement between the PRC and a foreign country contains provisions different from those of domestic law, the provisions of the international treaty or agreement will prevail.
- The Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure,which are enacted in accordance with the PRC CIT Law and the PRC Tax Collection and Administration Law, reconcile domestic tax law with international treaty obligations, by incorporat-

ing protocols such as MAP, to ensure that both frameworks work together cohesively for cross-border tax.
- The Notice of the State Administration of Taxation on Issuing the Rules for the International Exchange of Tax Informationsets forth the administrative procedures governing tax information exchange between China and other jurisdictions.

International Treaties: the Legal Backbone of Multilateral Co-Ooperation

- OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters: China first signed the convention in 2013, and as the world's most comprehensive instrument for international tax co-operation, the convention provides China with a robust multilateral legal framework on which to exchange tax information with more than 100 contracting parties.
- MLI: Serving as a comprehensive package of multilateral BEPS countermeasures, the MLI modernises China's bilateral tax treaty network by incorporating updated provisions on anti-treaty abuse and international dispute resolution.
- DTAs: China has signed DTAs with more than 100 countries and regions; these agreements not only prevent evasion of taxes and double taxation, but their information exchange provisions (usually referencing OECD or UN model agreements) also serve as the legal foundation for tax authorities in requesting and providing sensitive tax information.

7.2 Exchange of Information Clauses in Tax Agreements

China is a participant in the CRS and thus in automatic information exchange. China regularly and automatically exchanges cross-border financial account information with other signatories from over 100 jurisdictions to effectively prevent cross-border tax evasion.

7.3 Other Forms of International Tax Collaboration

In addition to MAPs and advance pricing agreements (APAs), China actively participates in other important multilateral co-operation arrangements, especially in the Belt and Road Initiative Tax Administration Cooperation Mechanism (BRITACOM), which was initiated and is led by the State Taxation Administration of China. Established in April 2019, this mechanism is an official, non-profit multilateral tax co-operation platform aimed at strengthening cross-border tax co-operation among countries and regions along the Belt and Road Initiative through "consultation, joint construction, and shared benefits", optimising the business environment and promoting trade facilitation.

Currently, China has not formally joined the OECD's International Compliance Assurance Programme (ICAP) nor implemented joint and simultaneous tax audits.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

China has established and is operating a MAP programme. The legal framework of this programme consists of domestic law and international treaties.

MAPs specifically address double taxation resulting from TP adjustments in related-party transactions, such as unreasonable increases or decreases in profit distribution by foreign tax authorities leading to excessively high income tax rates. The programme's legal basis includes DTAs, China's Measures for the Administration of Adjustments under Special Tax Investigation and Mutual Consultation Procedures, and the OECD TP Guidelines. At its core, it is based on the arm's length principle and the rule of "taxing profits where value is created", correcting improper profit distribution.

8.2 Application Deadlines

According to the Announcement on Issuing the Implementation Measures for the Mutual Agreement Procedure of Tax Treaties, when an applicant submits a mutual consultation application in accordance with the provisions of this chapter, the application must be submitted within the time limit stipulated in the DTA.

Most tax treaties give applicants three years from the date of the first time they were aware of the non-compliant tax measures. However, some DTAs have a time limit of less than three years, such as the one-

year period stipulated in the DTA between China and Turkey.

8.3 Mandatory Binding Arbitration

China has adopted mandatory binding arbitration on account of multilateral legal instruments such as the BEPS Multilateral Convention. MAPs remain China's preferred method for resolving cross-border tax disputes. The main issues with these lie in their strict prerequisites, overt dependence on bilateral tax treaties, and the fact that a third-party arbitration tribunal is the final decision-making power over the country itself. Therefore, their application in practice is very limited and far from being universal.

9. Dispute Prevention

9.1 Advance Pricing Agreements

China began using APAs on a trial basis in the late 1990s. After 2009, China's APA programme rapidly developed throughout the early 2010s and reached maturity in 2016.

Key Regulatory Milestones

- In 2016, the STA issued the Announcement of the State Taxation Administration on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements, which implemented successful provisions from the BEPS project and streamlined the APA workflow.
- In 2017, the STA issued the Announcement of the State Taxation Administration on Issuing the Administrative Measures for Special Tax Adjustment and Investigation and Mutual Agreement Procedures in order to incorporate measures recommended by Action 14 of BEPS, which requires participating jurisdictions to increase their efficiency in resolving MAP disputes.
- In July 2021, the Announcement of the State Taxation Administration on Matters Regarding Application of the Simplified Procedures for Unilateral Advance Pricing Arrangements was released to help taxpayers obtain tax certainty on transfer pricing arrangements through the application assessment, negotiation and signing, and monitoring and implementation stages.

9.2 Other Mechanisms

In addition to the APA, Mainland China also employs an "Advance Tax Ruling" system, and together, these constitute a multi-faceted mechanism to ensure certainty in international tax matters.

"Advance Tax Ruling" refers to a service provided by tax authorities that is meant to increase tax certainty and mutual trust between tax authorities and enterprises. For example, when a company submits an enquiry asking for clarification on the applicable tax laws and regulations for a specific and complex tax matter, the tax authorities provide written guidance based on current tax laws and regulations.

Although there are currently no national-level regulations governing advance tax rulings, in recent years, many local tax authorities have experimented with providing personalised services for large enterprises. Consequently, many companies have applied for advance tax rulings on international tax matters (such as the application of DTA treatments).

Trends and Developments

Contributed by:
Ying Ding
Shihui Partners

Shihui Partners is a leading law firm in China, with a team of talented, dedicated and passionate legal practitioners. Shihui's compliance department consists of seven partners and equity counsels supported by approximately 20 professionals based across its Beijing, Shanghai and Shenzhen offices. Shihui's tax team has interdisciplinary knowledge of law, economics, finance, accounting and taxation, and is skilled at combining legal analysis with commercial insights to provide clients with efficient business solutions. Shihui's tax practice assists corporate and individual clients across a range of industries in their local and cross-border investments, daily operations and tax dispute resolution. Recent representative work includes tax planning, advisory and compliance services relating to overseas investments and operations, enterprise restructurings, and working with HNW individuals, as well as dispute resolution concerning corporate income tax and value-added tax.

Author



Ying Ding is an equity counsel at Shihui Partners who focuses her practice on tax law. She has extensive experience in tax planning, tax advisory and compliance, tax dispute resolution, private wealth, and executive and employee incentives. She is familiar with the tax systems of China, the US, Singapore, Hong Kong and other major jurisdictions, as well as international taxation and treaty application rules. Ying holds bar qualifications in China, New York and California. She is also a qualified tax adviser in China.

Shihui Partners

8th Floor, Aurora Plaza
No 99 Fucheng Road
Pudong New District
Shanghai 200120
China

Tel: +86 21 2043 7500
Fax: +86 10 8514 7469
Email: shanghai@shihuilaw.com
Web: www.shihuilaw.com

SHIHUI PARTNERS
世辉律师事务所

Legislative Landscape

During the 14th Five-Year Plan period (2021–2025), China made substantial progress in strengthening the rule of law, fairness and efficiency in taxation.

Laws

The Value-Added Tax Law (VAT Law) was enacted on 25 December 2024 and came into force on 1 January 2026. For decades, VAT – which generates the highest tax revenue among the 18 taxes currently levied in China – was governed by provisional regulations and departmental rules. The VAT Law therefore marks a new era for China's VAT system.

Since the beginning of the 2026 tax year, the State Taxation Administration (STA) has rapidly issued new regulations and guidance to ensure the smooth implementation of the VAT Law.

To date, of the 18 taxes levied in China, 14 tax laws are in force, listed below in chronological order of enactment (effective dates may differ):

- Individual Income Tax Law;
- Corporate Income Tax Law;
- Vehicle and Vessel Tax Law;
- Environmental Protection Tax Law;
- Tobacco Leaf Tax Law;
- Vessel Tonnage Tax Law;
- Vehicle Purchase Tax Law;
- Cultivated Land Occupation Tax Law;
- Resource Tax Law;
- Urban Maintenance and Construction Tax Law;
- Deed Tax Law;
- Stamp Duty Law;
- Tariff Law; and
- Value-Added Tax Law.

The remaining four taxes yet to be legislated include the excise tax, land appreciation tax, real estate tax, and urban and town land use tax.

Notably, in March 2025, the STA and the Ministry of Finance jointly published a long-awaited consultation on revision of the Tax Collection and Administration Law (TCAL). The current TCAL was last comprehensively revised in 2001, with minor amendments in 2013 and 2015. The revised TCAL, once enacted, will strengthen tax administration across key areas including information collection, reporting by platform operators, law enforcement, and tax controversy.

Regulations

Consistent with the policy objectives of building a unified national market and a unified social credit system, the STA has introduced numerous new regulations and practical guidelines in recent years.

These instruments introduced new and amended rules concerning:

- tax credit ratings for taxpayers and fee payers;
- taxation and administration of enterprises undergoing bankruptcy; and
- tax services to facilitate business establishment, dissolution and re-domiciliation (within China).

Administrative Measures

To improve the efficiency of tax administration, China has continued upgrading the Golden Tax System and tax big-data management. The tax authorities have applied tax big-data (tax-related information gathered from a wide range of sources) in analysing economic growth, detecting tax non-compliance, and supporting other administrative functions.

Fully digitalised electronic invoices

In December 2024, following several years of trials in selected provinces, China implemented the use of fully digitalised electronic invoices (全面数字化电子发票) nationwide. These electronic invoices are stored in digital form, and automatically transmit specified information to the tax authorities.

Tax-related information reporting by platform operators

Following a public consultation in December 2024, the State Council issued the Provisions on Internet Platform Enterprises' Reporting of Tax-Related Information (State Council Decree No 810) on 20 June 2025.

The STA subsequently issued several implementing guidelines, including the Announcement of the State Taxation Administration on Matters Concerning Internet Platform Enterprises' Reporting of Tax-Related Information (STA Announcement No 15 of 2025).

These documents establish a new tax-related information reporting regime for the platform economy – requiring platform operators to report the demanded identity and income information of on-platform operators and individual workers to the tax authorities.

The reporting regime is intended to better implement the Electronic Commerce Law, standardise the tax regulatory framework for the platform economy, and promote tax fairness. It is specifically designed to address long-standing and common tax misconduct in the live-streaming sector involving multi-channel networks (MCNs) and streamers.

The inaugural reporting took place in October 2025. The reporting regime has significantly strengthened tax big-data management, supporting information cross-checking and verification. Since its implementation, the STA has published several cases in which penalties were imposed on MCNs and streamers.

Notably, overseas platform operators may also be subject to the reporting regime if they have on-platform operators, workers or customers in China.

Enhanced administration of resident individuals and their overseas income

In 2018, China undertook a major reform of the individual income tax (IIT) system. The revised Individual Income Tax Law (IIT Law) took effect on 1 January 2019.

The IIT Law defines resident and non-resident individuals as follows:

- resident individuals – individuals who have a domicile in China, or individuals who do not have a domicile in China but have resided in China for an aggregate of 183 days or more in a tax year; and
- non-resident individuals – individuals who do not have a domicile in China and have not resided in China, or individuals who do not have a domicile in China but have resided in China for less than an aggregate of 183 days in a tax year (ie, they do not meet the 183-day presence requirement).

In general, resident individuals are liable for IIT on their worldwide income, while non-resident individuals are liable for IIT on income from sources within China.

The IIT Law classifies individuals' taxable income into nine categories:

- income from salary and wages;
- income from remuneration for personal services;
- income from author's remuneration;
- income from royalties;
- income from business operation;
- income from interest, dividends, or bonuses;
- income from leasing of assets;
- income from transfer of assets; and
- incidental income.

For resident individuals, the first four categories are collectively defined as "Comprehensive Income". After the end of each tax year, resident individuals must file an annual tax reconciliation return between 1 March and 30 June of the following tax year to settle any underpaid or overpaid IIT on comprehensive income. During the same filing period, resident individuals must also report their overseas income and settle any unpaid IIT on that.

Starting from the 2024 tax year, the tax authorities have intensified law enforcement relating to the taxation of resident individuals' overseas income, relying on financial account information obtained via the Common Reporting Standard (CRS). Many individuals have been notified by the tax authorities to self-declare overseas income from previous tax years (mostly from the 2022 tax year onwards), and pay IIT in arrears together with late-payment surcharges. Reports suggest that law enforcement may extend to earlier tax years since the STA first obtained financial account information via the CRS.

It is also noteworthy that law enforcement of the 183-day presence test has become stricter. This affects not only foreign nationals working and living in China, but Chinese individuals who have acquired foreign citizenship or residency but continue to work and live in China.

Enhanced follow-up tax administration

To support entrepreneurship and innovation, China has introduced a series of tax and fee reduction policies since 2018. For example, the research and development super-deduction provided under the Corporate Income Tax Law (CIT Law) – generally available to enterprises except those in negative-list industries – was increased to 75% in January 2018, and further raised to 100% in October 2022.

At present, most tax incentives can be claimed by taxpayers on a self-assessment basis, especially for corporate income tax (CIT) purposes. No prior approval from the tax authorities is required. However, taxpayers must retain relevant documentation for follow-up tax administration, inspections or audits.

At the same time, the tax authorities have increased scrutiny in follow-up tax administration, examining the truthfulness and reasonableness of taxpayers' eligibility and claims for tax incentives.

In circumstances of abuse of tax incentives, tax fraud or tax evasion, taxpayers will need to pay outstanding taxes, late-payment surcharges and penalties, as applicable. Starting from the 2025 tax year, the STA has frequently disclosed cases involving abuse or misuse of tax incentives.

Notably, the application of tax treaties also adopts the self-assessment method. Practice indicates heightened scrutiny in determining beneficial owner (BO) status. There has been a rise in cases where the tax authorities have denied non-resident taxpayers' BO claims. Consequently, non-resident taxpayers have been required to pay outstanding taxes, together with late-payment surcharges or interest. (See also the section below titled "Non-resident taxpayers: entitlement to treaty benefits".)

Taxation of Non-Resident Enterprises

For CIT purposes, non-resident enterprises (including foreign corporations and partnerships) are generally subject to a 10% withholding rate on their China-sourced income. As provided in applicable tax treaties, the withholding rate could be lower.

Tax incentives for foreign reinvestment

Starting from the 2017 tax year, qualified foreign institutional investors have been eligible for a tax deferral policy in respect of distributed profits (dividends) from their Chinese subsidiaries. If the distributed profits are directly used for eligible reinvestment in China (without remittance overseas), foreign investors are temporarily exempt from the 10% (or lower treaty rate) withholding tax on the distributed profits.

In February 2025, the STA reported that a total of CNY162 billion was reinvested in China in 2024 as a result of the tax deferral policy.

More remarkably, in June 2025, China further introduced a new tax credit policy for eligible reinvestment, effective from 1 January 2025 to 31 December 2028. Qualified foreign investors will be granted a calculated amount of tax credit. They can use the tax credit to offset future withholding tax liabilities on income from the same distributing subsidiary.

With careful structuring, foreign investors may benefit from both policies, potentially achieving full exemption from withholding tax on the distributed profits.

However, the eligibility conditions for the two incentives differ. For example, the tax credit policy requires a minimum five-year holding period in respect of the reinvestment. Failure to satisfy the holding period requirement may result in the forfeiture or adjustment of the previously claimed tax credit, meaning retroactive payment of withholding taxes plus late-payment surcharges.

A controversial issue concerning foreign-invested partnerships

Under domestic law, a domestic partnership is treated as a "pass-through" entity for income tax purposes. Accordingly, in a foreign-invested domestic partnership structure, the foreign partner(s) are liable for CIT on income received by the partnership.

Meanwhile, the CIT Law provides a concept of "establishment or place". If a non-resident enterprise has an "establishment or place" in China, it is liable for CIT on:

- China-sourced income that is derived by the "establishment or place"; and
- foreign-sourced income that is effectively connected with the "establishment or place".

In both scenarios, CIT is charged at the standard 25% rate, the same as for resident enterprises, together with compliance obligations such as tax registration, bookkeeping and tax filing.

In practice, debate has continued for years as to whether a domestic partnership alone, or the investment and business activities relating to the domestic partnership, constitutes an "establishment or place", thereby exposing the foreign partner(s) to the 25% CIT rate and associated obligations.

In the 2025 tax year, some investment funds (eg, Qualified Foreign Limited Partnerships) were notified by local tax authorities to complete tax registration and pay CIT at 25%. It remains unclear what criteria were applied by the tax authorities, and whether this approach will become a nationwide practice, or how it will interact with the concept of "permanent establishment" under tax treaties.

Application of Tax Treaties

Non-resident taxpayers: entitlement to treaty benefits

Starting from the 2020 tax year, non-resident taxpayers are entitled to claim treaty benefits on a self-assessment basis. Taxpayers and withholding agents must retain relevant documentation, including a tax residency certificate issued by the competent authority of the other contracting party.

Tax authorities may conduct follow-up administration and request non-resident taxpayers or withholding agents to submit the documentation and other relevant information. Misuse or abuse of tax treaties will result in retroactive payment of taxes plus late-payment surcharges. (See also previous section titled "Enhanced follow-up tax administration".)

Resident taxpayers: application of tax residency certificates

As more Chinese companies expand their businesses globally, the STA released a new regulation on the issuance of tax residency certificates in January 2025, effective on 1 April 2025. This aims to better support taxpayers' cross-border transactions and claims for treaty benefits in overseas jurisdictions.

Notably, branches, partnerships and sole proprietorships cannot apply for tax residency certificates in their own name. Instead, the head office, partners or owners must apply to the competent tax authorities for the certificates.

Tax Controversy

The administrative law system protects taxpayers' rights to apply for administrative reviews and file administrative lawsuits regarding tax-related disputes against the tax authorities.

Tax administrative review

In 2023, China revised the Administrative Review Law, effective on 1 January 2024. In August 2025, the Ministry of Justice published a public consultation on revision of the Implementation Regulations for the Administrative Review Law.

The revised Administrative Review Law introduced new procedural rules. These rules apply to the tax authorities when reviewing administrative cases, and have brought significant changes to practice. The upcoming revised Implementation Regulations are expected to bring further changes.

Tax administrative litigation

In November 2023, a specialised tax collegial bench was established within the Primary People's Court of Siming District of Xiamen City. The tax collegial bench was granted centralised jurisdiction over tax-related criminal, civil and administrative cases that were previously heard by primary courts in Xiamen City.

In February 2024, two levels of specialised tax tribunals were established in Shanghai, within the Railway Transportation Primary Court of Shanghai and the Third Intermediate People's Court of Shanghai Municipality respectively. The two tax tribunals exercise centralised jurisdiction over administrative cases involving the Shanghai tax authorities as a party.

Advance tax rulings

In December 2023, the Shanghai Municipal Tax Bureau issued trial measures on advance tax rulings. In October 2025, it released formalised measures on the advance tax ruling system.

Under the ruling system, taxpayers may obtain a written opinion from the competent tax authority on the application of tax laws and regulations to specific and complex tax issues. A ruling may be issued with respect to a particular transaction before it is consummated, or after it is consummated but before the required tax return (due within three months or a longer period) is filed.

In addition to Shanghai, the tax authorities in other regions such as Beijing, Shenzhen and Chongqing have also introduced (trial) measures on advance tax rulings.

Notably, the advance tax ruling system does not cover advance pricing agreements (APAs) for related-party transactions. China implemented a simplified application procedure for unilateral APAs in 2021.

Tax crimes

Taxpayers and withholding agents may face criminal charges for tax evasion, tax fraud, false issuance of VAT invoices, or other unlawful acts.

In March 2024, the Supreme People's Court and the Supreme People's Procuratorate jointly issued a judicial interpretation clarifying the criteria for adjudicating criminal tax cases. The two bodies also regularly publish guiding precedents to secure consistency in judicial decision-making.

Other Key Issues

The Hainan Free Trade Port

On 18 December 2025, the Hainan Free Trade Port (Hainan FTP) officially commenced its island-wide special customs operations. The entire Hainan FTP island has become a special customs supervision zone, applying an expanded "zero-tariff" policy for imported goods.

In addition, the Hainan FTP applies a reduced CIT rate of 15% (compared to the standard 25% rate) for eligible entities registered and operating in the Hainan FTP. The top IIT rate for wages and other eligible income is also 15%.

Going forward, the Hainan FTP's tax system is expected to undergo a further round of reforms.

Pillar Two

To date, China has not announced any legislative process regarding the OECD Global Anti-Base Erosion Model Rules (Pillar Two).

FINLAND



Law and Practice

Contributed by:
Petteri Rapo, Markku Renko, Henri Becker and Jaakko Niskala
Svalner Atlas Finland

Contents

1. Sources and Principles p.132
1.1 Domestic Sources of International Tax Law p.132
1.2 Hierarchy of Sources p.132
1.3 OECD Model/United Nations Influence on Treaty Practice p.132
1.4 Multilateral Instrument p.132

2. Territoriality, Residence and Permanent Establishment p.132
2.1 General Principle of Territorial Taxation p.132
2.2 Tax Residence of Individuals p.133
2.3 Taxation of Resident Individuals p.133
2.4 Taxation of Non-Resident Individuals p.133
2.5 Tax Residence of Legal Entities p.133
2.6 Definition of Permanent Establishment p.133

3. Taxation of Cross-Border Income p.134
3.1 Income From Immovable Property p.134
3.2 Business Profits p.134
3.3 Passive Income p.134
3.4 Capital Gains p.134
3.5 Employment Income p.134
3.6 Other Income p.135

4. OECD/G20 Global Tax Reform p.135
4.1 Pillar One – Amount B p.135
4.2 Pillar One – Amount A p.135
4.3 Pillar Two p.136
4.4 Specific Features or Deviations of Pillar Two p.136
4.5 Digital Services Tax p.136

5. Anti-Avoidance and Anti-Evasion Measures p.136
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.136
5.2 Anti-Avoidance Mechanisms p.136
5.3 Blacklists and Non-Cooperative Jurisdictions p.137
5.4 Reporting Obligations and Disclosure Regimes p.137
5.5 Role of Tax Authorities and Enforcement Measures p.138

6. Penalties and Sanctions p.138
6.1 Tax Penalties p.138
6.2 Criminal Penalties p.138
6.3 Interaction Between Tax and Criminal Procedures p.138

7. Administrative Co-Operation p.139
7.1 Legal Framework for Administrative Co-Operation p.139
7.2 Exchange of Information Clauses in Tax Agreements p.139
7.3 Other Forms of International Tax Collaboration p.139

8. Mutual Agreement Procedures and Arbitration p.139
8.1 Availability and Legal Basis p.139
8.2 Application Deadlines p.139
8.3 Mandatory Binding Arbitration p.140

9. Dispute Prevention p.140
9.1 Advance Pricing Agreements p.140
9.2 Other Mechanisms p.140

Svalner Atlas Finland is the Finnish member of Svalner Atlas Advisors, an independent tax and transaction advisory group with 400+ professionals across offices in Stockholm, Gothenburg, Copenhagen, Oslo, Amsterdam, Helsinki and Turku. In Finland, the team comprises 70 professionals based in Helsinki and Turku. The firm's international tax practice advises multinational groups, investors and owner-led businesses on cross-border corporate tax matters, and works in integrated teams with related specialists in transfer pricing, global mobility, indirect tax, legal, accounting and transaction services to support both planning and implementation. Recent examples include advising a global electronics manufacturer under a framework Tax HelpDesk covering global mobility, international and domestic tax consultancy and transfer pricing documentation services, and supporting a global platform company's managed exit from the Finnish market with corporate, indirect and international tax workstreams, including exit-related structuring, final filings and interactions with authorities, with analysis of alternatives such as a cross-border merger or liquidation.

Authors



Petteri Rapo is the managing partner of Svalner Atlas Finland and a senior international tax adviser with extensive experience in international corporate taxation, transfer pricing and tax controversy. He advises multinational groups and senior executives on complex cross-border tax matters and has long-standing experience leading demanding advisory engagements. Petteri is regularly recognised for his expertise and is actively engaged in the professional tax community through expert roles and industry recognition.



Markku Renko is a partner at Svalner Atlas Finland leading the transfer pricing and international corporate taxation business group. He advises multinational groups on operating models, valuations and complex cross-border tax matters and draws on experience from both advisory practice and the Finnish Tax Administration. Markku is widely recognised for his expertise and actively contributes to the development of professional tax advisory practice.



Henri Becker is a partner at Svalner Atlas Finland with a focus on international corporate taxation and complex transaction-related tax advisory. He advises clients on cross-border structuring, succession planning and demanding corporate tax matters, combining technical expertise with a strong client-driven approach. Henri is actively involved in the professional tax advisory community.



Jaakko Niskala is a senior manager at Svalner Atlas Finland specialising in international corporate taxation and transfer pricing. He advises multinational clients on complex cross-border tax projects, compliance and documentation matters, and works closely with partners on large international engagements. Jaakko represents the next generation of senior tax professionals and actively contributes to professional practice development within the firm.

Contributed by: Petteri Rapo, Markku Renko, Henri Becker and Jaakko Niskala, **Svalner Atlas Finland**

Svalner Atlas Finland

Eteläesplanadi 8
00130 Helsinki

Tel: +358 10 219 3890
Email: finland@svalneratlas.com
Web: www.svalneratlas.fi



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Finland's international tax position is determined primarily by statute law (notably the Act on Income Tax), complemented by Finnish Tax Administration (Vero) guidance and case law. Treaty application is supported in practice through published treaty texts and synthesised treaty texts (including versions synthesised by the Multilateral Instrument (MLI)) that are made available for users.

Finland maintains an extensive bilateral income tax treaty network.

1.2 Hierarchy of Sources

Finland's domestic rules determine tax liability and taxable income as a starting point, while tax treaties can limit Finland's taxing rights in cross-border situations. The domestic residency and source rules have priority over treaty-based outcomes for cross-border payments and residency tie-break considerations. In practice, treaty application requires checking (i) whether the taxpayer is treated as resident or non-resident under domestic rules, and (ii) whether a treaty modifies the result, including through MLI modifications where applicable.

From a practical application perspective, treaty analysis typically includes verifying whether the relevant treaty text is an MLI-synthesised version and whether treaty amendments affect core items such as allocations of taxing rights or withholding tax rates, as emphasised in Finnish Tax Administration treaty guidance. The same guidance also underlines that the MLI's effects are applied treaty-by-treaty and must be checked for each treaty partner.

1.3 OECD Model/United Nations Influence on Treaty Practice

Finland's treaties and treaty practice generally follow the structure and concepts of the OECD Model, including the standard treaty architecture (eg, Articles on residence, permanent establishment, associated enterprises, the Mutual Agreement Procedure (MAP) and exchange of information), which also supports consistency in interpreting treaty concepts in practice. This OECD alignment is particularly visible in transfer pricing-related treaty interpretation, where OECD-based concepts are used as an interpretative reference point when applying treaty provisions on profit attribution and related concepts.

1.4 Multilateral Instrument

Finland ratified the MLI on 13 February 2019 (parliamentary ratification), and the MLI entered into force in Finland on 1 June 2019. Finland's ratification decree and reservations/notifications are referenced in Finnish official publications, and MLI effects apply treaty-by-treaty depending on the other jurisdiction's status.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Finland distinguishes between resident and non-resident tax liability, which determines whether Finland taxes worldwide income (residents) or only Finnish-source income (non-residents).

The Finnish Tax Administration's residency guidance frames this resident/non-resident distinction as the key determinant of worldwide versus source-based taxation for individuals, and also links the domestic classification to tax treaty residence concepts where

a treaty applies. In cross-border cases, this means that the domestic classification is the starting point, but treaty residence tests can become relevant where dual residence arises.

The same guidance emphasises that domestic residence/non-residence is assessed under the Income Tax Act and that treaty residence analysis is relevant primarily where the treaty's residence concept must be applied alongside domestic status (eg, in dual-residence situations).

2.2 Tax Residence of Individuals

An individual is treated as Finnish tax resident if they have their permanent home in Finland or if they stay in Finland for a continuous period of more than six months. Finnish citizens who move abroad are generally subject to the three-year rule, under which they remain Finnish tax resident during the year of departure and the following three tax years unless they can demonstrate they no longer have "essential ties" to Finland. "Essential ties" refers typically to maintaining a permanent home in Finland, a spouse living in Finland, ownership of Finnish real property (beyond a summer cottage) and certain ongoing economic or work connections.

The Finnish Tax Administration's dedicated guidance on the three-year rule highlights that changing to non-resident status during the three-year period generally requires a specific request and evidence that economic and social ties have ceased; it also provides indicative examples of ties that often keep residency in place, such as ongoing Finnish social security coverage or continuing to run a business or perform work in Finland.

2.3 Taxation of Resident Individuals

Finnish tax residents are, as a starting point, taxed on worldwide income, but treaty rules and domestic mechanisms can mitigate double taxation. In cross-border contexts, Finland's approach is to determine domestic liability first and then apply treaty and procedural mechanisms (including treaty benefits where conditions are met).

Finnish Tax Administration residency guidance expressly describes residents as having "unlimited" tax liability in Finland (worldwide income), while also noting that treaty residence rules may become relevant where the treaty requires determining residence under treaty criteria in addition to domestic law.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals are taxed in Finland on Finnish-source income, commonly through tax at source. Finnish Tax Administration guidance on cross-border dividends/interest/royalties explains that non-resident status limits Finland's taxing rights and that treaty benefits may reduce Finnish tax at source where eligibility can be demonstrated.

In practice, treaty relief at source generally requires that the income beneficiary is identified and that eligibility for treaty benefits is verified using reasonable measures (eg, a certificate of residence or an investor self-declaration in the relevant withholding tax context).

2.5 Tax Residence of Legal Entities

A company is resident in Finland if it is incorporated/registered in Finland. In addition, foreign corporate entities may be treated as Finnish resident taxpayers if their place of effective management is in Finland.

Finnish Tax Administration guidance explains that "place of effective management" refers to where the corporate entity's board or other decision-making body makes top-level decisions on daily management, taking into account the broader facts of the organisation and operations. It also distinguishes this resident-taxpayer concept from situations where a "place of management" may instead create a Finnish permanent establishment for a non-resident foreign company.

2.6 Definition of Permanent Establishment

For income tax purposes, the concept of permanent establishment (PE) stems from the tax treaties and is aligned with the OECD Model; ie, a PE is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried out. Potential variations in certain details (such as time thresholds) are treaty-specific.

Finnish Tax Administration guidance for foreign companies describes typical PE examples consistent with treaty practice, including places such as a place of management, branch, factory or workshop, and notes that construction/installation projects may constitute a PE where the relevant treaty time threshold is exceeded. The same guidance also notes that a fixed place of business requires a distinct geographic location and a degree of permanence, and that in some circumstances a PE may also be linked to a dependent agent, depending on the facts and applicable treaty provisions.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Income from immovable property located in Finland (eg, rental income, certain usage compensations) is taxable in Finland regardless of the taxpayer's residence. This follows both Finnish domestic law and Finland's tax treaties, which allocate taxing rights over immovable property income to the state where the property is located.

Rental income from immovable property is treated as capital income for residents and non-residents. Capital income is taxed at:

- 30% on the first EUR30,000, and
- 34% on the excess.

Rental income from property located outside Finland is also taxable in Finland for residents, subject to double tax relief under the applicable tax treaty (typically credit or exemption methods).

3.2 Business Profits

In Finland, corporate business profits are taxed at a flat 20% corporate income tax rate, with resident companies taxed on worldwide income and non-resident companies taxed only on profits attributable to a Finnish permanent establishment.

Partnerships are transparent for tax purposes, with profits taxed at partner level.

Self-employed individuals are taxed under the individual income tax system, where business profits are split into capital and earned income, while non-residents are taxed only if they have a permanent establishment or fixed base in Finland.

Tax treaties mainly limit Finland's taxing rights for foreign businesses without a Finnish presence.

3.3 Passive Income

For payments from Finland to non-residents, the payer must generally withhold tax at source at 20% where the beneficiary is identified as a corporate entity, 30% where the beneficiary is identified but its status is unclear, and 35% where required beneficiary information is missing (notably nominee-registered shares). Treaty benefits or other legal grounds can reduce the rate where eligibility is documented.

In addition to rate mechanics, Finnish practice places strong emphasis on beneficial-owner identification and treaty-eligibility verification as conditions for granting treaty relief at source, particularly for dividends on nominee-registered shares. Treaty benefits are granted only where the beneficiary is identified and eligibility has been verified.

3.4 Capital Gains

In Finland, capital gains arise from the disposal of assets, such as shares, real estate, business interests or other property. For individuals, capital gains are taxed as capital income (taxable at the standard capital income tax rate of 30% or 34%). For companies, capital gains are generally treated as part of taxable business income (taxable at the 20% corporate income tax rate), unless a specific exemption applies.

In cross-border contexts, treaty provisions (eg, Article 13 of the OECD Model structure) can affect the allocation of taxing rights, especially for share disposals linked to immovable property or permanent establishment assets, depending on the treaty wording.

3.5 Employment Income

Finland distinguishes between resident and non-resident taxpayers:

- Residents (permanent home in Finland or stay exceeding six months) are subject to unlimited tax liability and are taxed on their worldwide employment income.
- Non-residents (stay of six months or less) are taxed in Finland only on Finnish-source employment income.

Individuals working in Finland for six months or less are generally treated as non-residents. Their employment income may be taxed in Finland depending on the circumstances.

- *Default taxation:*35% final withholding tax on gross wages (after a standard deduction of EUR510 per month/EUR17 per day).
- *Optional progressive taxation:* Non-residents from treaty countries may opt for progressive taxation instead of the flat 35%.

Even for short stays, Finland may tax employment income if:

- the employer has a permanent establishment (PE) in Finland;
- the individual is a leased employee;
- the individual is a performing artist or athlete; or
- a tax treaty allocates taxing rights to Finland.

Finland does not have separate domestic legislation specifically for "remote work PEs". Instead, PE risk is assessed under the Finnish domestic law and tax treaties following OECD Model principles. Remote work performed physically in Finland is generally treated as Finnish-source employment income, regardless of employer location, unless a tax treaty restricts Finland's taxing rights. Remote work performed outside Finland by a Finnish resident may qualify under the six-month rule, but only if the statutory conditions are met.

3.6 Other Income

There are no other specific types of income subject to special taxation rules in Finland.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As of April 2026, Finland has not formally implemented Amount B, nor has it announced binding administrative guidance or legislation adopting the OECD Amount B simplified and streamlined approach. Finland remains aligned with the OECD Transfer Pricing Guidelines generally, but Amount B is optional by design, and there is no public statement from the Finnish Ministry of Finance or the Finnish Tax Administration confirming adoption, planned adoption or local deviations.

In the absence of a Finland-specific Amount B implementation, distributors and baseline marketing/distribution activities remain subject to Finland's ordinary transfer pricing framework, including the requirement to prepare transfer pricing documentation under the Finnish rules (documentation rules are unchanged even after the 2022 update to the transfer pricing adjustment provision). As a result, any simplification for baseline distribution would, in practice, need to be reflected through explicit domestic guidance or accepted administrative practice to have operational effect.

4.2 Pillar One – Amount A

Finland supports Pillar One Amount A at the OECD/Inclusive Framework level but has not yet implemented it domestically. Finland considers the practical impact on Finnish enterprises to be limited, supports implementation only via the Multilateral Convention (MLC), and has taken no unilateral action while the MLC remains unsigned and unratified.

Finland has participated in OECD-level discussion on the taxation challenges of digitalisation and has supported the need for an international solution led through the OECD process, including the view that the digital economy should not and cannot be ringfenced. This broader policy context aligns with Finland's preference for multilateral implementation rather than unilateral domestic action in this area. The Finnish Tax Administration commentary further notes that implementing Amount A would require a multilateral convention that is not yet open to signature,

and therefore Amount A does not, for the time being, require action by Finnish enterprises.

4.3 Pillar Two

Finland has implemented the OECD/G20 global minimum tax under Pillar Two.

The rules apply to accounting periods beginning on or after 31 December 2023 (ie, from tax year 2024 for calendar-year groups). The Undertaxed Profits Rule generally applies to accounting periods beginning on or after 31 December 2024 (ie, from tax year 2025).

Finland has also adopted a Qualified Domestic Minimum Top-up Tax applying from periods beginning on or after 31 December 2023.

The minimum tax returns can be submitted as of 30 January 2026.

4.4 Specific Features or Deviations of Pillar Two

Finland's implementation of the global minimum tax under Pillar Two closely follows the OECD/GloBE framework and the EU Minimum Tax Directive, with no material policy-driven deviations. Where differences exist, they are technical, EU-driven or administrative, rather than substantive departures from the OECD Model Rules.

4.5 Digital Services Tax

Finland's policy discussion has historically emphasised an OECD-based global solution to digitalisation-related tax challenges, including the view that the digital economy should not be ring-fenced. This reinforces the point that Finland has not introduced a separate domestic digital services tax and has instead focused on multilateral approaches to address digitalisation-driven issues.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

In Finland, "tax fraud" vs "tax evasion" is generally covered by the tax crime provisions in the Finnish Criminal Code (*Rikoslaki*) Chapter 29. The core offence is *veropetos* (tax fraud). Its key elements focus on deceptive conduct aimed at producing an incorrect tax outcome (or attempting to do so).

Legal criteria (core elements) for *veropetos* include that a person (i) gives the authority false information relevant to assessment, (ii) conceals a relevant fact in a return/notice, (iii) fails a tax-related duty with the intent to avoid tax, or (iv) otherwise acts fraudulently, and thereby causes or attempts to cause tax not to be assessed or to be assessed too low, or to cause an undue refund. These are explicitly listed as alternative "modes of commission" in the *veropetos* provision.

Finland also has aggravated and petty forms. Aggravated tax fraud (*törkeä veropetos*) is characterised (in essence) by seeking substantial economic benefit and/or particularly planned conduct, plus an overall assessment of seriousness. This is relevant in cross-border settings where structures are intentionally engineered to hide income, beneficial ownership or flows.

5.2 Anti-Avoidance Mechanisms

Finland combats tax fraud, evasion and avoidance through a combination of general and targeted anti-avoidance rules, information-reporting regimes and risk-based tax control. A central tool is the general anti-avoidance rule (GAAR) in the Act on Assessment Procedure (VML), applied where arrangements are implemented primarily to obtain tax benefits contrary to the purpose of tax law; the Finnish Tax Administration has issued detailed guidance on the application of the GAAR (VML 28 §).

In cross-border contexts, specific anti-avoidance mechanisms include, among others: (i) CFC rules under the Finnish Controlled Foreign Company regime (Act 1217/1994) and related guidance, aimed at pre-

venting the diversion of Finnish-taxable income to low-taxed foreign entities; (ii) interest limitation rules (EVL 18 a/18 b) restricting net interest deductions to address base erosion through excessive debt funding; and (iii) transfer pricing rules based on the arm's length principle, including documentation obligations and reporting (eg, Form 78, CbC rules), used both for compliance and as a basis for audit selection and potential adjustments.

Finland also relies heavily on transparency and disclosure. DAC6 requires reporting of certain cross-border arrangements that meet hallmarks associated with aggressive tax planning, thereby enabling early detection and deterrence. In addition, Finland participates in automatic exchange of financial account information (FATCA, CRS and DAC2), which strengthens tax control and combats offshore evasion. Finally, Finland has implemented enhanced procedures in the withholding tax context (eg, for nominee-registered shares) that require identifying and verifying the dividend beneficiary before treaty benefits can be granted at source.

5.3 Blacklists and Non-Cooperative Jurisdictions

Finland does not rely on a stand-alone domestic "blacklist" in the same way some jurisdictions do; however, for EU purposes, Finland references the EU list of non-cooperative jurisdictions for tax purposes in areas such as DAC6 reporting. The Finnish Tax Administration explicitly notes that updates to the EU list should be taken into account when reporting arrangements under the DAC6 hallmark that refers to non-cooperative jurisdictions.

Tax consequences in Finland that are clearly linked to "listed jurisdictions" are therefore most directly seen through reporting/monitoring effects (eg, DAC6 hallmark-driven reporting and increased transparency), rather than an automatic, Finland-specific punitive tax rate solely triggered by a blacklist designation. Where cross-border payments are concerned, Finland's system can also impose practical consequences where beneficiary identification is not properly established for treaty relief at source, requiring robust verification and documentation.

5.4 Reporting Obligations and Disclosure Regimes

Finland uses extensive reporting and disclosure regimes to detect and prevent tax fraud, evasion and avoidance, especially in cross-border situations.

Key regimes include:

- *DAC6 (reportable cross-border arrangements):* Intermediaries (service providers) or, in some cases, the relevant taxpayer must report qualifying cross-border arrangements that meet specified hallmarks. Reports must generally be filed within 30 days from the triggering event, and can be submitted via MyTax or Ilmoitin.fi (including XML/name-value formats).
- *Country-by-country (CbC) reporting:* Multinational groups meeting the threshold (generally EUR750 million consolidated revenue) are subject to CbC reporting and notification obligations. The Finnish Tax Administration provides detailed instructions and e-filing processes for both the CbC report and the notification of reporting entity.
- *Transfer pricing documentation and annual disclosure:* Taxpayers within scope must maintain transfer pricing documentation and submit annual disclosures (including Form 78 "Explanation of Transfer Prices" with the corporate income tax return where applicable), supporting risk assessment and audit selection.
- *Automatic exchange of information (AEOI) – FATCA/CRS/DAC2:* Finnish financial institutions must identify reportable account holders and file annual information returns. Finland then exchanges such information automatically with partner jurisdictions, which "enhances tax control and combats tax evasion".
- *Other third-party reporting regimes:* Finland also applies structured third-party reporting frameworks (eg, platform operator reporting and other specified reporting duties) within the Act on Assessment Procedure framework. The Tax Administration has detailed guidance on penalty payments relating to failures to comply with specified third-party reporting obligations (including FATCA/CRS/DAC2, DAC6 and platform reporting).

In addition, Finland enables reporting of suspected non-compliance through an electronic channel, allowing the Tax Administration to receive tips (including anonymously) about suspected tax evasion.

5.5 Role of Tax Authorities and Enforcement Measures

The Finnish Tax Administration has broad powers to examine taxpayers' compliance through administrative tools, primarily information requests and tax audits, supported by statutory audit rules and detailed administrative guidance.

Tax audits are a core tool of tax control. The legal provisions governing tax audits are set out in, among others, Section 14 of the Act on Assessment Procedure (and parallel rules for self-assessed taxes, prepayments and car tax), and the Tax Administration has issued comprehensive guidance describing tax audit objectives and procedure.

During a tax audit, the taxpayer may be required to provide extensive material. Finnish secondary legislation governing the audit process (*verotusmenettelyasetus*) specifies that, in a tax audit, the taxpayer must present for inspection business-related material and property, including accounting records and supporting documents (eg, ledgers, vouchers), correspondence, notes and other accounting/management documentation, contracts and minutes, etc.

As regards unannounced visits and "raids/fiscal perquisitions", Finland's primary tax-control model is administrative auditing and information-gathering under tax procedure legislation. The Tax Administration guidance recognises that audits can be conducted simultaneously with other authorities' measures, for example where a police pre-trial investigation is ongoing; in such cases the tax auditor acts under tax-law powers while criminal investigative powers lie with the competent criminal authorities.

6. Penalties and Sanctions

6.1 Tax Penalties

The Finnish framework for administrative penalties relevant to cross-border transactions includes (i) tax increases and late-filing charges under tax procedure rules, and (ii) specific penalty payments for failures in international reporting and transfer pricing documentation. Administrative tax penalties are imposed and administered by the Finnish Tax Administration.

As a general matter in income taxation, taxpayers may be subject to administrative late fees and tax increases (*veronkorotus*) where returns or required information are late, incomplete or incorrect; the Tax Administration describes tax increases as calculated on a formula basis (eg, a percentage of the added income) in personal income tax contexts. More broadly, the statutory basis for tax increases in the Act on Assessment Procedure (VML) is reflected in case law applying VML 32 § (and related provisions).

For cross-border compliance specifically, Finland provides for administrative penalties tied to transfer pricing documentation and CbC reporting. Finland's transfer pricing profile indicates that for non-compliance with documentation or CbC reporting requirements, the tax authorities may impose a penalty not exceeding EUR25,000, and such penalty may be imposed even if no transfer pricing adjustment is made.

In addition, failures to comply with certain international third-party reporting obligations (including FATCA/CRS/DAC2, DAC6 and platform reporting) can trigger a penalty payment (*laiminlyöntimaksu*) under VML 22 a §; the Tax Administration has detailed guidance on the imposition of such penalties in relation to specified reporting obligations.

6.2 Criminal Penalties

Tax fraud offences are criminalised under the Finnish Criminal Code (Chapter 29). In broad terms, tax fraud (*veropetos*) is punishable by a fine or imprisonment for up to two years, while aggravated tax fraud (*törkeä veropetos*) may lead to imprisonment typically in the range of four months up to four years, depending on the circumstances (eg, substantial benefit sought or particularly methodical conduct).

6.3 Interaction Between Tax and Criminal Procedures

Finland follows a framework intended to prevent "double punishment" for the same conduct (ne bis

in idem). The Finnish Tax Administration explains that tax increases can be comparable to criminal penalties, and that tax-related misconduct is therefore handled either administratively or through criminal proceedings, depending on the nature and severity of the case. Where a matter is to be handled as a crime case, the Tax Administration may issue a tax assessment decision but refrain from issuing a tax-increase decision, and may file a crime report, after which the prosecutor may bring charges.

There is not an "automatic" referral for every irregularity; rather, the framework requires an authority decision on the appropriate track (administrative penalty vs criminal process) in light of ne bis in idem considerations. In practice, co-ordination is facilitated by the possibility to conduct a tax audit alongside other authorities' actions, including situations where a police pre-trial investigation is ongoing.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Finland's administrative co-operation in tax matters is grounded in a combination of EU directives, international agreements/standards and bilateral tax treaties.

At an operational level, Finland participates in automatic exchange of information based on international commitments and instruments, including FATCA, the OECD CRS and the EU DAC2 framework. Finland also implements EU administrative co-operation measures such as DAC6, which provides for reporting and EU-level exchange of information on reportable cross-border arrangements.

For dispute resolution within the EU, Finland applies the national Act on International Tax Dispute Resolution Procedure (530/2019) and related decree, which transpose Council Directive (EU) 2017/1852 on EU tax dispute resolution mechanisms into Finnish law.

7.2 Exchange of Information Clauses in Tax Agreements

Finland exchanges information through multiple channels, including automatic exchange and structured reporting regimes. Finland participates in automatic exchange of information and receives information in return; this includes FATCA, CRS and DAC2, supported by annual reporting obligations for Finnish financial institutions. Additionally, DAC6 operates as an "early alert" mechanism in the EU, requiring reporting of certain arrangements and enabling exchange of the reported information among EU tax authorities.

7.3 Other Forms of International Tax Collaboration

Beyond the MAP and advance pricing agreements, Finland participates in (and has developed) additional collaborative and proactive tools aimed at increasing tax certainty and reducing disputes, particularly in transfer pricing. One example is Cross-Border Dialogue, which is a Finnish-initiated process designed to align preliminary ruling outcomes in more than one jurisdiction through administrative co-operation and information exchange channels.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Finland has an established MAP practice. In transfer pricing matters specifically, the MAP may be based on: (i) the MAP article in Finland's income tax treaties (aligned with Article 25 of the OECD Model), (ii) the EU Arbitration Convention (90/436/EEC), or (iii) the EU tax dispute resolution mechanism under Directive 2017/1852 as implemented domestically. The domestic procedural framework is set out in the Act on International Tax Dispute Resolution Procedure (530/2019) and related decree.

8.2 Application Deadlines

The filing deadline for a MAP request depends on the relevant tax treaty or the applicable EU dispute resolution procedure. The time limit is usually three years from the first time the taxpayer learned that they had been taxed contrary to the treaty (eg, upon receiving a tax decision) or (for an EU dispute resolution procedure) three years from when the taxpayer first learned about the double taxation (eg, tax decision).

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is generally available in Finland in EU disputes within the scope of the EU dispute resolution framework. Finland has implemented the EU dispute resolution mechanism through the Act on International Dispute Resolution Procedure (530/2019), transposing Directive (EU) 2017/1852, which is designed to ensure effective resolution of disputes (including those leading to double taxation) and provides for dispute resolution mechanisms where the competent authorities do not reach agreement within the prescribed timeframes.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Finland recognises advance pricing agreements (APAs) as a dispute prevention tool in transfer pricing. There is no separate APA legislation; instead, Finland can conclude APAs with treaty partners and the APA process is based on the MAP in Finland's tax treaties, which in turn is grounded in Article 25 of the OECD Model Tax Convention.

9.2 Other Mechanisms

There are several tools available in Finland for obtaining tax certainty: pre-emptive discussion (*ennakollinen keskustelu*) as an early-stage dialogue resulting typically in a memo that supports reliance but is not appealable, advance rulings (*ennakkoratkaisu*) as a written binding decision on the applicant's own taxation (subject to conditions and potential appeal), and cross-border dialogue as a multi-country advance process aimed at aligned national outcomes rather than a single inter-state agreement.

Furthermore, an enhanced customer co-operation programme (*syvennetty asiakasyhteistyö*), launched in Finland in 2016, is aimed at multinational enterprises and focused on reviewing tax strategy and risks with a more real-time, open dialogue to increase predictability and reduce disputes.

Trends and Developments

Contributed by:
Petteri Rapo, Markku Renko, Henri Becker and Jaakko Niskala
Svalner Atlas Finland

Svalner Atlas Finland is the Finnish member of Svalner Atlas Advisors, an independent tax and transaction advisory group with 400+ professionals across offices in Stockholm, Gothenburg, Copenhagen, Oslo, Amsterdam, Helsinki and Turku. In Finland, the team comprises 70 professionals based in Helsinki and Turku. The firm's international tax practice advises multinational groups, investors and owner-led businesses on cross-border corporate tax matters, and works in integrated teams with related specialists in transfer pricing, global mobility, indirect tax, legal, accounting and transaction services to support both planning and implementation. Recent examples include advising a global electronics manufacturer under a framework Tax HelpDesk covering global mobility, international and domestic tax consultancy and transfer pricing documentation services, and supporting a global platform company's managed exit from the Finnish market with corporate, indirect and international tax workstreams, including exit-related structuring, final filings and interactions with authorities, with analysis of alternatives such as a cross-border merger or liquidation.

Authors



Petteri Rapo is the managing partner of Svalner Atlas Finland and a senior international tax adviser with extensive experience in international corporate taxation, transfer pricing and tax controversy. He advises multinational groups and senior executives on complex cross-border tax matters and has long-standing experience leading demanding advisory engagements. Petteri is regularly recognised for his expertise and is actively engaged in the professional tax community through expert roles and industry recognition.



Markku Renko is a partner at Svalner Atlas Finland leading the transfer pricing and international corporate taxation business group. He advises multinational groups on operating models, valuations and complex cross-border tax matters and draws on experience from both advisory practice and the Finnish Tax Administration. Markku is widely recognised for his expertise and actively contributes to the development of professional tax advisory practice.



Henri Becker is a partner at Svalner Atlas Finland with a focus on international corporate taxation and complex transaction-related tax advisory. He advises clients on cross-border structuring, succession planning and demanding corporate tax matters, combining technical expertise with a strong client-driven approach. Henri is actively involved in the professional tax advisory community.



Jaakko Niskala is a senior manager at Svalner Atlas Finland specialising in international corporate taxation and transfer pricing. He advises multinational clients on complex cross-border tax projects, compliance and documentation matters, and works closely with partners on large international engagements. Jaakko represents the next generation of senior tax professionals and actively contributes to professional practice development within the firm.

Contributed by: Petteri Rapo, Markku Renko, Henri Becker and Jaakko Niskala, **Svalner Atlas Finland**

Svalner Atlas Finland

Eteläesplanadi 8
00130 Helsinki

Tel: +358 10 219 3890
Email: finland@svalneratlas.com
Web: www.svalneratlas.fi



Key Themes for 2026

Finland's international tax environment in 2026 is being shaped by a cluster of policy moves rather than one single reform. The direction of travel is clear: improve competitiveness, simplify certain rules, and raise transparency where the tax base is perceived as vulnerable. Much of the agenda was signposted in the government's 2025 mid-term policy review and subsequent policy communications.

A first theme is corporate tax competitiveness. The corporate income tax rate has been flagged for reduction to 18% from 2027, and the loss carryforward period has been proposed to be extended to 25 years (starting from losses in the 2026 tax year). These changes, if implemented as proposed, affect modelling, deal structuring and the long-term after-tax return profile of investments in Finland.

A second theme is targeted reform in transactions and investment markets. The same policy package highlights potential updates to tax-neutral reorganisations and share-for-share transactions, with a stated intention to make rollovers more workable (including review of cash consideration limitations) and to support venture capital and private equity investment structures.

A third theme is indirect tax adjustments that affect consumer-facing sectors and cross-border supply chains. Finland's reduced VAT rate has already been lowered from 14% to 13.5% from 1 January 2026 for a wide list of goods and services, and the Tax Administration has issued practical guidance on how to apply the rate change based on delivery/performance dates and advance payments.

A fourth theme is transparency and data-driven enforcement. DAC8/CARF crypto-asset reporting will expand the Tax Administration's inbound information from 2026 onwards, with annual returns expected from service providers starting in 2027, and international exchange of information set to intensify.

1. Corporate Tax Policy: Rate Direction, Losses and the Investment Narrative

Corporate income tax rate: the headline signal

The most visible corporate tax policy signal remains the proposed reduction of Finland's corporate income tax rate from 20% to 18% from 2027. It is positioned as a competitiveness and entrepreneurship measure.

For clients, the immediate relevance is modelling and timing. Rate expectations can affect investment hurdle rates, deferred tax positions and the timing of income recognition where flexibility exists. This is particularly relevant for capital-intensive projects and groups with large Finnish tax bases.

Loss utilisation: a structural change if implemented

A second significant policy item is the proposal to extend the loss carryforward period from ten years to 25 years starting from losses incurred in the 2026 tax year. This has been presented as part of the same competitiveness package and would, if implemented, change the "shape" of Finnish tax assets for cyclical and growth businesses.

For clients, the impact is not only technical. Longer loss carryforward increases the value of Finnish platforms for long-horizon investments, and it can change acquisition modelling where future profitability is expected to ramp over time. It also affects financing

and restructuring decisions where interest limitation and loss usage interact.

Private capital and fund policy: easing market friction

Finland's policy agenda also highlights reforms aimed at improving the venture capital and private equity environment. The mid-term package references work to facilitate foreign investment into Finnish funds, to assess new fund structures, and to implement EU-enabled fund structures such as ELTIFs, alongside other procedural simplifications.

These measures are relevant because Finland's capital market relies heavily on predictable tax and workable procedure for cross-border investors. For clients, the trend is towards a more "investor-usable" framework, though outcomes will depend on the final form of legislative changes.

2. Transaction and Restructuring Policy: Making Tax Neutrality More Usable

Share-for-share transactions and rollovers

A key practical issue raised with current rules is that they can be restrictive where cash is involved, and there is a stated intention to review these constraints to facilitate tax-neutral rollovers in real-world transactions.

In practice, rollover mechanics are a common source of friction in Nordic and cross-border deals, particularly where management investors and anchor shareholders are involved. Changes in this area can materially affect how deals are structured and executed in Finland.

Broader M&A simplification agenda

The same government policy package also signals a wider review of M&A tax treatment to correct distortions and simplify processes. While the precise legislative outcome remains to be seen, the direction suggests a preference for rules that support deal execution while protecting the tax base through targeted safeguards rather than broad complexity.

For clients, the practical implication is that Finnish deal structuring may become more flexible in certain areas, but also more "rule-driven" in terms of documentation and process. This combination is typical of reforms intended to support investment while maintaining a predictable tax framework.

3. Indirect Tax Policy: the 13.5% Reduced VAT Rate is Now Live

What changed on 1 January 2026

Finland has lowered its reduced VAT rate from 14% to 13.5% from 1 January 2026 for a broad set of goods and services. The Tax Administration lists the categories covered, including groceries and food, restaurant and catering services, passenger transport, accommodation services, pharmaceuticals, books (printed and electronic), and certain admissions and sports-related services, and it notes that public broadcasting moved to 13.5% from the previously applied 10%.

This is a meaningful change for consumer-facing sectors, but it also affects any business with mixed supplies or complex pricing models. For cross-border groups, it is a reminder that Finnish VAT policy continues to evolve and that invoicing systems must be kept aligned with changes.

Practical transition rules matter

Businesses typically need to adjust invoicing rules, contract language and customer communications, particularly where delivery spans year-end or where long-term services are billed in advance.

4. Transparency Policy: DAC8/CARF Crypto Reporting Becomes Real in 2026

Why crypto reporting is a policy priority

The government in Finland has made clear that crypto-asset reporting is expanding due to international commitments. The Tax Administration states that, starting in tax year 2026, it will receive more extensive information on trading in crypto-assets, and that international exchange of information will intensify. It also links this to the OECD's Crypto-Asset Reporting Framework (CARF) and the EU's DAC8 directive.

This is not only a "crypto" issue. It is part of a broader transparency trend, where cross-border data flows allow tax authorities to match taxpayer disclosures against third-party information more effectively. For

clients, it raises the importance of consistent reporting and internal record quality.

5. Pillar Two in Finland: Policy Refinement and Administrative Tools

Amendments and safe harbours are now part of the policy story

Finland's Pillar Two framework is already in place, but 2026 is notable because of the pace of refinement. Law No 187/2026 introduces amendments aligning Finland's Pillar Two rules with the latest OECD administrative guidance and incorporates elements from the Inclusive Framework's side-by-side package, including safe harbour elements.

For clients, the point is that Pillar Two is now policy-driven as well as technical. Safe harbour availability, advance ruling scope and anti-avoidance elements influence real-world risk management, not only computational outcomes.

Advance rulings and integrity measures

The Tax Administration can issue advance rulings regarding the minimum tax for accounting periods that started on or after 1 January 2024. Additionally, a new provision on tax evasion was added to prevent arrangements seeking to evade the minimum tax, applying to accounting periods starting on or after 1 January 2027.

This is important because it shows how Finland is building a domestic administrative "layer" around Pillar Two. The policy intent is to support compliance (through advance rulings) while protecting the integrity of the regime (through targeted anti-avoidance).

6. Corporate Residence and Governance: POEM Remains a Live Policy and Practice Topic

Updated guidance reinforces the policy approach

Finland's corporate residence policy has been strengthened through guidance emphasising the "place of effective management" concept for foreign entities. The Tax Administration's detailed guidance (dated 10 February 2026) discusses tax residency and non-residency of corporate entities and focuses on foreign corporate entities and the "place of effective management" (POEM) concept.

The guidance states that resident corporate entities include domestic entities and foreign entities that have their POEM in Finland, and it links resident status to worldwide tax liability. It also states that foreign entities without POEM in Finland are non-resident and taxed on Finnish-source income, including income attributable to a permanent establishment where relevant.

Why this is topical now

For clients, POEM is increasingly relevant because governance models have become more dispersed. Groups may have key decision-makers working across borders, and decision-making may not align neatly with where the entity is incorporated. Finland's policy and guidance underscore that the "where decisions are made" question can have tax consequences.

This is not a reason to avoid Finland. It is a reason to manage governance deliberately and ensure that operating reality matches the intended tax profile. For many groups, that means being clear about decision processes and keeping appropriate records.

7. Practical Takeaways: What to Do Now

Focus on the policy items that change real decisions

Clients operating in Finland in 2026 typically benefit from prioritising the policy changes that affect commercial choices. Rate direction, loss usage, transaction rule reform, VAT changes and data transparency regimes each influence different business functions. The goal is to avoid treating these as "tax department only" topics.

- *Corporate tax modelling:* Reflect the proposed 18% rate from 2027 and the proposed 25-year loss carryforward (from 2026 losses) in scenario models, without assuming enactment until confirmed.
- *Transactions and reorganisations:* Track developments on share exchange and rollover reforms if you anticipate Finnish M&A or management incentive structures.
- *VAT and pricing:* Ensure systems and contracts are applying the 13.5% reduced rate correctly, including delivery/performance date logic and advance payments.

Contributed by: Petteri Rapo, Markku Renko, Henri Becker and Jaakko Niskala, **Svalner Atlas Finland**

- *Crypto transparency:* If you are a provider or a business with material crypto exposure, treat 2026 as the beginning of systematic third-party reporting and exchange of information.
- *Pillar Two governance:* Monitor safe harbour and advance ruling developments and be alert to regime-specific integrity provisions.
- *Governance footprint:* Review POEM exposure where senior decision-makers are located in Finland or where management activity is Finland-centred.

Finland's 2026 tax story is increasingly policy-driven and multi-track. Competitiveness measures (rate and losses), market facilitation (transactions and investment structures), targeted consumption policy (VAT) and stronger transparency (crypto reporting and Pillar Two integrity tools) are all moving at the same time. For clients, the practical win is to treat these as connected themes and to plan governance and reporting accordingly.

FRANCE

Law and Practice



Contributed by:
Anthony Roustan and Cédric Dubucq
Bruzzo Dubucq

Contents

1. Sources and Principles p.148
1.1 Domestic Sources of International Tax Law p.148
1.2 Hierarchy of Sources p.148
1.3 OECD Model/United Nations Influence on Treaty Practice p.148
1.4 Multilateral Instrument p.149

2. Territoriality, Residence and Permanent Establishment p.149
2.1 General Principle of Territorial Taxation p.149
2.2 Tax Residence of Individuals p.149
2.3 Taxation of Resident Individuals p.149
2.4 Taxation of Non-Resident Individuals p.150
2.5 Tax Residence of Legal Entities p.151
2.6 Definition of Permanent Establishment p.151

3. Taxation of Cross-Border Income p.151
3.1 Income From Immovable Property p.151
3.2 Business Profits p.152
3.3 Passive Income p.152
3.4 Capital Gains p.152
3.5 Employment Income p.153
3.6 Other Income p.154

4. OECD/G20 Global Tax Reform p.154
4.1 Pillar One – Amount B p.154
4.2 Pillar One – Amount A p.154
4.3 Pillar Two p.154
4.4 Specific Features or Deviations of Pillar Two p.154
4.5 Digital Services Tax p.154

5. Anti-Avoidance and Anti-Evasion Measures p.155
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.155
5.2 Anti-Avoidance Mechanisms p.155
5.3 Blacklists and Non-Cooperative Jurisdictions p.155
5.4 Reporting Obligations and Disclosure Regimes p.155
5.5 Role of Tax Authorities and Enforcement Measures p.156

6. Penalties and Sanctions p.156
6.1 Tax Penalties p.156
6.2 Criminal Penalties p.156
6.3 Interaction Between Tax and Criminal Procedures p.157

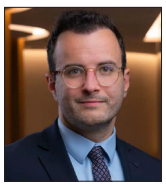
7. Administrative Co-Operation p.157
7.1 Legal Framework for Administrative Co-Operation p.157
7.2 Exchange of Information Clauses in Tax Agreements p.157
7.3 Other Forms of International Tax Collaboration p.157

8. Mutual Agreement Procedures and Arbitration p.158
8.1 Availability and Legal Basis p.158
8.2 Application Deadlines p.158
8.3 Mandatory Binding Arbitration p.158

9. Dispute Prevention p.158
9.1 Advance Pricing Agreements p.158
9.2 Other Mechanisms p.158

Bruzzo Dubucq is an independent French law firm based in Aix-en-Provence and Paris, with a dedicated tax department headed by partners Cédric Dubucq and Anthony Roustan – both recognised among the "100 qui font le patrimoine" (Top 100 in Wealth Management) in France for the past two consecutive years. The team advises high net worth individuals, corporate groups and real estate investors on complex domestic and cross-border tax matters. The firm is particularly recognised for its pioneering use of the French limited liability partnership (société en commandite simple) to structure and optimise real estate taxation within family groups. Over the last ten years, Bruzzo Dubucq has been recognised for its ability to assist clients on tax matters, combined with an economic and cross-border approach, thanks to a network of independent boutiques in most OECD countries in relation to tax, economy and litigation.

Authors



Anthony Roustan is a partner in Bruzzo Dubucq's tax department, specialising in international taxation and real estate tax structuring. He previously practised at PwC and Arsene Taxand. Listed among the "100 qui font le patrimoine" (Top 100 in Wealth Management) in France in 2025, Anthony advises multinational groups, entrepreneurs and high net worth individuals on cross-border tax planning, transfer pricing and disputes before the French administrative courts. He actively contributes to legislative developments on the French fiducie, allowing France to have an equivalent to Anglo-Saxon trusts.



Cédric Dubucq is the founding and managing partner of Bruzzo Dubucq. A renowned trial lawyer and litigator, he heads the firm's tax practice with Anthony Roustan. Listed among the "100 qui font le patrimoine" (Top 100 in Wealth Management) in France in 2024, Cédric is recognised for his expertise in high-value tax disputes, real estate taxation and wealth structuring. He pioneered the modern use of the French limited liability partnership (société en commandite) simple for real estate tax optimisation, and regularly appears before the highest French administrative and civil courts.

Bruzzo Dubucq

520 avenue Henri Mauriat
13100 Aix-en-Provence
France

Tel: +33 04 86 91 14 96
Email: cabinet@bruzzodubucq.com
Web: www.bruzzodubucq.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Domestic Legislation

The principal source of French international tax law is the *Code général des impôts* (General Tax Code; CGI), supplemented by its regulatory annexes and the *Livre des procédures fiscales* (Book of Tax Procedures; LPF). Key provisions address tax residence, non-resident taxation, the corporate territorial principle, transfer pricing and anti-avoidance rules.

The definition of a resident in domestic French law is found in Article 4 B of the CGI.

Administrative Guidance

The *Bulletin Officiel des Finances Publiques* (Official Bulletin of Public Finances; BOFiP) provides a binding administrative doctrine that taxpayers may rely upon. This includes specific guidance on treaty interpretation and international reporting obligations. The BOFiP is binding on the tax authorities.

Case Law

The French Supreme Court (*Conseil d'État*) plays a decisive role through rulings on treaty interpretation, beneficial ownership and anti-abuse provisions. It often relies on the OECD Model Commentary as a supplementary interpretative tool.

Treaty Network

France has over 120 bilateral tax conventions in force, generally following the OECD Model Convention. The treaty network covers all major trading partners and typically addresses elimination of double taxation, allocation of taxing rights and exchange of information.

1.2 Hierarchy of Sources

Constitutional Framework

Under Article 55 of the Constitution, duly ratified tax treaties hold supra-legislative rank, prevailing over conflicting domestic legislation. This principle has been consistently upheld since the Supreme Court's *Nicolo* decision (1989).

Hierarchy

The hierarchy of sources is as follows:

- constitutional provisions sit at the apex;
- EU law enjoys primacy over national law;
- tax treaties rank below EU law but above domestic statutes;
- domestic legislation applies to the extent that it does not conflict with treaties; and
- administrative doctrine (BOFiP) binds the tax authorities but not the courts.

Practical Implications

In practice, the Administrative Courts first apply domestic French law and then check whether a treaty provision prevents or limits the application of domestic law.

In France, the principle is that a treaty can only reduce the taxation power of the contracting state, and cannot create a new right to tax that is not provided by domestic law.

Taxpayers frequently invoke treaty provisions to override less favourable domestic rules, particularly to reduce withholding tax rates on cross-border payments. Courts apply the Vienna Convention on the Law of Treaties principles and may depart from administrative doctrine where it conflicts with the treaty text.

1.3 OECD Model/United Nations Influence on Treaty Practice

General Alignment

France's treaty practice is firmly rooted in the OECD Model Convention, reflecting its role as a founding OECD member. Most French treaties closely follow the OECD Model structure in their allocation of taxing rights and dispute resolution mechanisms.

Key Deviations

Notable deviations from the OECD Model include:

- a broader definition of royalties that often includes payments for industrial, commercial or scientific equipment;
- reliance on the credit method rather than the exemption method for double taxation elimination,

with exceptions (notably the exemption method used with Germany); and
- in treaties with developing countries, elements drawn from the UN Model such as limited source-state taxation on technical service fees.

France has entered reservations on several OECD Model Commentary articles, particularly regarding the treatment of partnerships and beneficial ownership interpretation.

1.4 Multilateral Instrument

France signed the Multilateral Instrument (MLI) on 7 June 2017 and ratified it on 26 September 2018, with its entry into force on 1 January 2019. France adopted a broad approach, listing a substantial number of bilateral treaties as Covered Tax Agreements.

France opted for the Principal Purpose Test (PPT) as the minimum standard for treaty abuse prevention, and chose to apply mandatory binding arbitration under Part VI. The MLI has effectively modified a significant portion of France's bilateral treaty network, introducing anti-abuse provisions, updated permanent establishment rules, and improved dispute resolution mechanisms.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Individual Taxation

France taxes resident individuals on their worldwide income. Non-residents are taxed only on French-source income as defined by the CGI. This worldwide approach means that residents must report and pay tax on income earned anywhere in the world, subject to double taxation relief.

Corporate Taxation

For companies, France applies a territorial principle: entities are taxed only on profits derived from activities carried on in France or attributable to a French permanent establishment. Foreign branch and subsidiary profits are generally excluded, with limited exceptions such as controlled foreign company (CFC) rules.

Overseas Territories

France's overseas departments generally follow metropolitan tax legislation with specific incentives. Overseas collectives such as New Caledonia have autonomous tax systems and are treated as separate jurisdictions for treaty purposes.

2.2 Tax Residence of Individuals

Domestic Criteria

The CGI provides four alternative criteria, any one of which can establish French tax residence:

- where the taxpayer's home (*foyer*) is in France, meaning where the family habitually lives;
- if the taxpayer has no home (in France or abroad), they can be deemed resident if they have their principal place of abode in France (ie, the country where they spend the most time in a year);
- where they exercise a professional activity in France, unless that activity is ancillary (tax authorities consider that being a director of a French company is presumed to be a professional activity in France); or
- where the centre of their economic interests is located in France, being defined as the place from where the taxpayer derives the majority of their revenues.

Treaty Tie-Breaker Rules

Where a bilateral tax treaty applies, the treaty's tie-breaker rules prevail over domestic criteria. The *Conseil d'État* has developed extensive case law clarifying these domestic criteria, particularly the concept of "foyer" in cross-border family situations.

Since 2025, where a taxpayer is deemed to be non-resident by a treaty provision, they will also be considered non-resident for domestic law purposes.

2.3 Taxation of Resident Individuals

Progressive Income Tax

Residents are subject to progressive income tax at rates ranging from 0% to 45% on worldwide income, plus a high-income surtax of 3% to 4% above EUR250,000.

France taxes income by category: employment, business, real estate, investment income and capital gains.

In general, revenues from a professional activity (employment, business profits of an individual, retirement pensions, etc) would be subject to the progressive income tax.

In contrast, revenues from financial investments (capital gains, dividends, interest) would generally be subject to a flat tax of 12.8%, except where the taxpayer elects to have them taxed at the progressive tax rate.

Rental income is generally subject to the income tax rate, and real estate capital gains are subject to a specific tax rate of 19%, which can be reduced with an allowance for length of ownership.

Social Contributions

France applies specific levies to the different types of social contributions.

Contributions on the revenue from a professional activity are levied by the social authorities (URSSAF) and range from approximately 22% to more than 60% depending on the amount and category of the revenue. These are typically withheld by the employer or by the pension fund.

Revenues derived from passive income (dividends, interest, rental income, capital gains) are subject to a specific social contribution of 17.2%. From 2026, the rate of this contribution is increased to 18.6%, except on rental income and real estate capital gain. Individuals affiliated with an EU/Swiss social security system benefit from exemptions following the CJEU's *de Ruyter* decision, and are only subject to a contribution of 7.5%.

The social contributions on passive income are levied by the tax authorities, and are generally treated as an income tax for the application of tax treaties, in contrast to the contributions levied on professional income.

Family Quotient System

In France, taxpayers are taxed as a household. The spouses are taxed together without a possibility to opt out, except for spouses who are physically separated and married under a separation regime.

Children are included in the tax household until 18 years old. They can remain in the household until 21 years old without conditions, or until 25 years old if they are students.

The family quotient system (*quotient familial*) divides household income by number of shares reflecting family composition. The revenue of the household is divided by the number of shares to determine the tax rate applicable to the household.

This mechanism significantly reduces the tax burden for families with children, and is a distinctive feature of the French system.

2.4 Taxation of Non-Resident Individuals

Scope of Taxation

Non-residents are taxed only on French-source income, including income from French immovable property, professional activities performed in France, French-source pensions, French dividends and capital gains on substantial participations or French real estate.

Withholding Tax Rates

Withholding taxes apply as follows:

- professional income from an activity performed in France – income tax bracket;
- dividends – 12.8%, reducible under applicable treaties;
- interest – 0%; and
- royalties – 25%.

Minimum Tax Rate of Non-Residents

For revenues that are subject to the progressive tax rate, non-residents have a minimum tax rate of 20% for revenues below EUR29,579 and 30% for revenues above this threshold. If the application of the tax bracket leads to a higher tax rate, the higher tax rate is applied. This rule takes into account the fact that France cannot have full knowledge of the contributive capacity of non-residents, which depends on their other worldwide revenues.

Non-residents can demonstrate that they must be taxed at a lower rate, provided that they disclose their

worldwide revenues to calculate the effective tax rate at which they must be taxed in France.

2.5 Tax Residence of Legal Entities

Corporate tax residence is determined by three alternative criteria:

- the registered office (*siège social*) in France;
- the place of effective management, where key strategic decisions are made; or
- the existence of a permanent establishment.

In practice, the place of effective management is often decisive. It is determined by reference to where the board of directors actually meets and makes strategic decisions, rather than mere registration formalities. In treaty situations, tie-breaker rules apply, and the MLI has introduced the possibility of mutual agreement procedures for dual-resident companies.

2.6 Definition of Permanent Establishment

Domestic Framework

French domestic law does not contain an explicit statutory definition of permanent establishment. The concept has been developed through case law and administrative doctrine, and is broadly aligned with the OECD Model Convention.

Treaty Practice

In treaty contexts, France follows the OECD Model, with a broader agent-dependent definition of permanent establishment, capturing persons who habitually play the principal role that leads to contract conclusion.

Digital Economy Challenges

The digital economy creates specific challenges regarding the concept of taxable presence. In several recent decisions, the *Conseil d'État* has addressed whether foreign digital platforms create permanent establishments through local activities – an area of ongoing judicial development.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

General Principles

French immovable property income is taxable in France regardless of the recipient's residence. France distinguishes between revenue from non-furnished property and from furnished property.

Non-furnished property

For non-furnished property, rental income is taxed at the income tax bracket and subject to the social contribution of 17.2%. It can lead to a maximum effective tax rate of 45% (tax bracket) + 4% (exceptional contribution on high revenues) + 17.2 % = 66.2% maximum.

The main categories of expenses that are deductible from the revenue are property expenses, interests, property tax, renovation and amelioration work. Acquisition costs (notary fees, transfer tax) and amortisation are not deductible.

For rental income below EUR15,000 per year, taxpayers may elect for a simplified regime with a 30% allowance on the gross rental income.

Furnished property

For furnished property, rental income is considered a business and commercial income. This allows the taxpayer to deduct depreciation and amortisation of the property and acquisition costs, in contrast to non-furnished property. The net profit is then taxed at the income tax bracket and social contributions at the rate of 18.6% (since 2026).

For rental income below EUR77,700 per year, taxpayers may elect for a simplified regime with a 50% allowance on the gross rental income. The threshold is reduced to EUR15,000 and 30% for short-term rental profits (stays below 30 days), unless the property is classified by the French Ministry of Tourism.

Non-Residents

For non-residents, the tax base is the same as for residents. They are subject to an income tax bracket with a minimum rate of 20% or 30% depending on the amount of revenue (see **2.4 Taxation of Non-Resident Individuals**). They are also subject to social contri-

butions at the same rate as residents; however, for people who are affiliated with an EU social security system, the social contribution in France is reduced to 7.5%.

3.2 Business Profits

Corporate Tax Rates

Corporate income tax applies at a standard rate of 25%, with a reduced 15% rate on the first EUR42,500 for qualifying SMEs. Under the territorial principle, only profits from French operations or French permanent establishments are subject to corporate income tax.

Dividend Exemption

Dividends derived from a subsidiary are exempt for 95% of their amount, provided that the parent company owns at least 5% of the share capital for a period of two years. The exemption is increased to 99% in tax-consolidated groups.

Participation Exemption

Capital gains on the sale of shares in a subsidiary are exempt for 88% of their amount, provided that the parent company owns at least 5% of the share capital for a period of two years. If the company owns less than 5%, it can demonstrate that the participation is useful for its business and thus claim the participation exemption. The remaining 12% of the capital gain is taxed at the standard corporate income tax rate (25%), leading to an effective tax rate of 3%.

Tax Losses

Tax losses can be carried forward without limitation in time. France applies a limitation of the use of carried-forward losses. If the taxable profit of the year exceed EUR1 million, only 50% of the profit exceeding EUR1 million per year is offsetable by the carried-forward tax losses.

Tax losses can be carried back on the previous tax year to obtain a reimbursement of corporate income tax paid on the previous tax year if the next year is a loss.

Transfer Pricing and Controlled Foreign Company (CFC) Rules

Transfer pricing rules require arm's length pricing and extensive documentation, including a master file, local file, and country-by-country report for qualifying groups.

CFC rules tax French parent companies on the income of foreign subsidiaries located in jurisdictions where the effective tax rate is below 60% of the French rate, in line with the EU Anti-Tax Avoidance Directive.

3.3 Passive Income

Dividends

Dividends are taxed at 12.8% of income tax, unless the taxpayer elects to have them taxed under the income tax bracket (from 0 to 45%). In that case, the tax base of the dividend is reduced by 40%. Dividends are subject to social security contribution at the rate of 18.6%.

Withholding tax is 12.8% for non-resident individuals (no social security contributions) and 25% for non-resident companies. Withholding tax can be eliminated under the EU Parent-Subsidiary Directive if the beneficiary is an EU company holding at least 5% of the share capital.

Double tax treaties can also reduce the domestic withholding tax rate.

Interest

Interest is exempt from withholding tax in France, unless it is paid to a non-cooperative country, in which case the withholding tax rate is 75%.

Royalties

Some royalties are subject to withholding at the corporate income tax rate under domestic law. This is eliminated between associated EU companies under the Interest and Royalties Directive, and can be reduced or eliminated by double tax treaties.

3.4 Capital Gains

Capital Gains of Individuals

Capital gains on shares and crypto-assets

Capital gains on securities, shares and crypto-assets are subject to a flat tax of 12.8%.

Taxpayers may elect to have the capital gain taxed at the standard income tax bracket; in that case, they can benefit from a deduction of up to 85% depend-

ing on the duration of ownership of the company. This deduction is only applicable for shares acquired before 2018.

Social contributions at the rate of 18.6% are applicable in both cases, and are calculated on the gross base before any deduction for duration of ownership.

Non-residents are only subject to capital gains on shares if:

- the underlying company's assets are composed of more than 50% of French real estate property; or
- the taxpayer owns more than 25% of the share capital in the underlying company.

The tax rate for non-residents is 12.8% without social contributions.

If the company's assets are composed of more than 50% French real estate property, the capital gain is taxed as a real estate capital gain (19% and social contributions at the rate of 17.2%).

Capital gains on real estate property

Capital gains on French property are taxed at 19%. An additional progressive tax between 2% and 6% might be applicable on gains exceeding EUR50,000.

Capital gains are also subject to social contributions at the rate of 17.2% (7.5% for individuals affiliated with another EU/Switzerland social security system).

The tax base is equal to the difference between the selling price and the price of acquisition. If amortisation and depreciation have been deducted from income tax (furnished property), they are deducted from the acquisition price and thus increase the capital gain.

The acquisition fees and the work that have not been deducted from income tax can increase the price of acquisition for the calculation of the capital gain.

The net capital gain can benefit from a deduction depending on the duration of ownership of the property. Capital gain is fully exempt from income tax after 22 years and from social contributions after 30 years.

Capital gain exemptions exist – in particular for the main residence of the taxpayer, which is exempted from capital gains tax.

Non-residents from a country outside the EU must appoint a tax representative to report their capital gains tax. The tax representative is jointly liable for the payment of the tax with the taxpayer.

Other capital gains

Other capital gains (eg, jewellery, cars, art, etc) are only taxed if the selling price exceeds EUR5,000. The tax base benefits from a deduction of 5% per year of ownership after the second year, leading to a total exemption after 22 years. The tax rate is 19%, and the capital gains are also subject to social contributions at the rate of 18.6%.

Corporate Participation Exemption

See **3.2 Business Profits**.

3.5 Employment Income

General Framework

Employment income is taxed at progressive rates with a 10% standard allowance on the tax base for professional expenses. Cross-border situations generally follow the OECD Model's employment income article (Article 15), with specific frontier worker provisions in certain treaties – notably those with Germany and Belgium.

Inbound Expatriate Regime

France's inbound expatriate regime provides partial exemption on the expatriation premium and foreign-source passive income for up to eight years. This applies to employees who were not previously French tax residents, and represents a significant incentive for attracting international talent.

Remote Working

Remote working raises specific cross-border issues. Bilateral agreements with Belgium, Germany, Luxembourg and Switzerland address the allocation of taxing rights for cross-border teleworkers. For employers, a home office used by an employee may constitute a permanent establishment under the relevant treaty.

3.6 Other Income

France generally follows the provision of the OECD Model Convention.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As of early 2026, France has not yet enacted specific legislation to implement Amount B. The French tax authorities have issued preliminary guidance indicating an intention to adopt the OECD's standardised return approach for qualifying baseline marketing and distribution transactions.

Implementation is expected through amendments to existing transfer pricing provisions and related administrative guidance. No significant deviations from the OECD framework are anticipated, although France has expressed reservations about the scope of qualifying transactions involving intangibles.

4.2 Pillar One – Amount A

France has been among the strongest advocates for Amount A within the Inclusive Framework, pushing for reallocation of taxing rights towards market jurisdictions. France's early adoption of a Digital Services Tax in 2019 was explicitly designed as an interim measure pending a multilateral agreement.

As of early 2026, the Multilateral Convention on Amount A remains unsigned. France continues to apply its Digital Services Tax while signalling potential expansion if a global agreement is not finalised. The outcome remains closely tied to broader geopolitical negotiations.

4.3 Pillar Two

France implemented Pillar Two through the Finance Act 2024, transposing the EU Minimum Tax Directive. The Income Inclusion Rule (IIR) applies from fiscal years beginning on or after 31 December 2023, and the Undertaxed Profits Rule (UTPR) from 31 December 2024.

The rules apply to multinational enterprise groups and large domestic groups with consolidated revenues of at least EUR750 million. The minimum effective tax rate is set at 15% on a jurisdictional basis.

4.4 Specific Features or Deviations of Pillar Two

Qualified Domestic Minimum Top-Up Tax

France introduced a Qualified Domestic Minimum Top-Up Tax (QDMTT), meeting the OECD safe harbour standards. This ensures that any top-up tax on low-taxed French entities is collected domestically rather than by another jurisdiction.

Treatment of the Research Tax Credit

A key French feature concerns the *Crédit d'Impôt Recherche* (Research Tax Credit; CIR), which is classified as a "qualified refundable tax credit" under the GloBE rules. It is therefore treated as income rather than a tax reduction, mitigating Pillar Two's impact on effective tax rate computations for R&D-intensive groups.

Transitional Provisions

France has adopted transitional safe harbour provisions allowing reliance on country-by-country report data during initial implementation years, reducing the compliance burden during the transition period.

4.5 Digital Services Tax

The French Digital Services Tax

France was the first major European country to implement a Digital Services Tax (Law No 2019-759), applying a 3% tax on revenues from two categories of digital activities:

- targeted advertising services based on user data; and
- digital intermediation platforms connecting users.

The tax applies to companies with worldwide digital revenues exceeding EUR750 million and French digital revenues exceeding EUR25 million. It was designed as temporary, pending Pillar One finalisation, but remains in force given negotiation delays.

Audiovisual Tax

Additionally, the *taxe video* imposes a 5.15% levy on revenues from on-demand audiovisual media services distributed in France. This is earmarked for the Centre

National du Cinéma and applies regardless of where the provider is established.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax Fraud

Tax fraud is a criminal offence defined as intentional evasion of tax through fraudulent means. It carries up to five years' imprisonment and EUR500,000 in fines.

Abuse of Law

Tax avoidance is primarily addressed through the abuse of law (*abus de droit*) procedure. The traditional provision allows the tax authorities to disregard arrangements whose exclusive purpose is to obtain a tax advantage.

France has two definitions of abuse of law:

- fictitious acts (eg, a gift disguised as a sale); and
- tax abuse, defined as using a specific provision in a way that was not the purpose of the law-maker, with the exclusive purpose of getting a tax advantage.

Abuse of law implies a penalty of up to 80% on the tax reassessment.

Since 2019, a "minor abuse of law" (*mini abus de droit*) provision allows tax authorities to disregard arrangements whose principal (and not exclusive) purpose is tax-driven, significantly broadening the scope of the abuse of law.

5.2 Anti-Avoidance Mechanisms

France has assembled a comprehensive anti-avoidance framework, combining domestic measures with transpositions of EU directives. The principal mechanisms are:

- the abuse of law procedure, which allows the tax authorities to disregard transactions motivated exclusively or principally by tax benefits;
- CFC rules, which tax French parent companies on the income of foreign subsidiaries in low-tax jurisdictions where the effective rate is below 60% of the French rate;
- transfer pricing rules, which require arm's length pricing with extensive documentation obligations (master file, local file, country-by-country report);
- thin capitalisation rules, which limit related-party interest deduction through a 1.5:1 debt-to-equity ratio and a 30% EBITDA cap;
- anti-hybrid mismatch rules, transposing the second Anti-Tax Avoidance Directive (ATAD2) and neutralising deduction/no-inclusion and double deduction outcomes; and
- exit taxation, imposing deferred tax on unrealised gains when taxpayers transfer their tax residence outside France.

5.3 Blacklists and Non-Cooperative Jurisdictions

The French Blacklist

France maintains a list of non-cooperative states and territories (*États et Territoires Non Coopératifs*, or ETNC), which is updated annually by ministerial decree.

Consequences

Transactions with ETNC-listed jurisdictions face:

- a 75% withholding rate on dividends, interest and royalties; and
- non-deductibility of expenses, unless the taxpayer demonstrates a genuine business purpose.

France also takes into account the EU blacklist of non-cooperative jurisdictions, which influences its own listing decisions. The combination of the ETNC list with CFC rules creates a powerful deterrent against the use of opaque jurisdictions.

5.4 Reporting Obligations and Disclosure Regimes

Mandatory Reporting Frameworks

France has implemented extensive reporting obligations targeting cross-border arrangements and offshore holdings:

- DAC6 – requires intermediaries to report cross-border arrangements meeting specified hallmarks;
- country-by-country reporting – applies to multi-national groups with revenues exceeding EUR750 million; and
- Common Reporting Standard (CRS) – requires financial institutions to report on non-resident account holders.

Individual Disclosure Obligations

Taxpayers must separately report on:

- foreign bank accounts;
- trust holdings; and
- foreign insurance contracts.

Non-compliance triggers penalties and extended assessment periods of up to ten years, reflecting France's emphasis on international tax transparency.

5.5 Role of Tax Authorities and Enforcement Measures

Key Authorities

The *Direction générale des finances publiques* (DGFiP) is the primary tax authority. Specialised units include the *Direction des vérifications nationales et internationales* (DVNI) for large enterprise audits and cross-border matters, and the *Direction nationale des enquêtes fiscales* (DNEF) for fraud investigations.

Audit and Investigation Powers

Powers available to the tax authorities include:

- desk audits and on-site audits lasting up to one year for large enterprises; and
- unannounced "dawn raids" (*perquisitions fiscales*) authorised by judicial order, allowing seizure of documents and electronic data.

Tax authorities have access to a variety of data from the other administrations, as well as from banks and, since 2026, from crypto-assets platforms.

Tax authorities are allowed to request administrative documents from contractors of the verified taxpayer (providers, clients, banks, etc) in the course of a tax audit.

Criminal Enforcement

The *Brigade nationale de répression de la délinquance fiscale* (BNRDF) investigates complex fraud cases in co-ordination with Europol and the OECD's JIT-SIC network. The *Parquet National Financier* (PNF), established in 2013, prosecutes major financial and tax fraud cases.

6. Penalties and Sanctions

6.1 Tax Penalties

Administrative Penalties

The administrative penalty framework includes graduated sanctions:

- late filing surcharge – 10%;
- interest on late payment – 0.20% per month;
- bad faith penalty – 40%; and
- fraud penalty – 80% for abuse of law or concealment.

International Specific Penalties

Additional penalties apply to international reporting failures:

- EUR100,000 for a missing country-by-country report;
- EUR10,000 minimum for deficient transfer pricing documentation; and
- EUR1,500 to EUR10,000 per undeclared foreign account, plus proportional penalties up to 80%.

An extended ten-year assessment period applies where assets or accounts were held abroad without proper declaration.

6.2 Criminal Penalties

Tax fraud carries five years' imprisonment and a EUR500,000 fine. Aggravated cases involving offshore accounts or shell companies are punished by seven years' imprisonment and a EUR3 million fine.

Money laundering of tax fraud proceeds is an autonomous offence carrying up to ten years' imprisonment. Legal persons are also criminally liable, with fines multiplied by five and potential ancillary sanctions, includ-

ing publication of conviction and exclusion from public procurement.

6.3 Interaction Between Tax and Criminal Procedures

Automatic Referral Mechanism

Before 2018, tax authorities had to submit the case to a specific commission (the *Commission des Infractions Fiscales*) in order to be allowed to refer a tax fraud to the prosecutor. It was not mandatory for the tax authorities to refer a tax fraud.

Since 2018, a reform introduced mandatory automatic referral to the public prosecutor when administrative penalties exceed certain thresholds. Specifically, referral is triggered when a 100% penalty is applied on a base exceeding EUR100,000 or an 80% penalty on a base exceeding EUR200,000. The PNF may also initiate proceedings independently.

Automatic referral also applies when a penalty of 40% is applied for the second time to a taxpayer, provided that the first penalty applied on a base of at least EUR100,000.

Current debates in parliament are discussing the possibility of reducing these thresholds and removing the *Commission des Infractions Fiscales*, to simplify the process of referral for smaller offences.

Co-Ordination

The *Commission des Infractions Fiscales* reviews referrals from the tax administration. Tax audits and criminal investigations may run in parallel, with the tax administration authorised to share information with judicial authorities. Taxpayers must carefully manage their rights across both proceedings simultaneously.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

France's international co-operation framework in tax matters rests on multiple legal instruments:

- the OECD Multilateral Convention on Mutual Administrative Assistance (ratified 2004);
- the EU DAC directives (DAC1 through DAC8), progressively expanding automatic exchange to financial accounts, tax rulings, country-by-country reports, cross-border arrangements, digital platforms and crypto-assets;
- bilateral treaty exchange-of-information clauses, modelled on the OECD Model;
- numerous Tax Information Exchange Agreements (TIEAs); and
- the EU Recovery Directive for mutual assistance in tax claim collection.

This multi-layered framework makes France one of the most active jurisdictions in international tax co-operation.

7.2 Exchange of Information Clauses in Tax Agreements

Automatic Exchange

France participates in automatic, spontaneous and on-request exchange of information. Automatic exchange under the CRS covers financial account data with over 100 jurisdictions. France also exchanges country-by-country report data, tax ruling information and reportable arrangement data automatically.

Crypto-Asset Reporting

France has committed to the OECD Crypto-Asset Reporting Framework (CARF) and EU DAC8, introducing automatic exchange on crypto-asset transactions from 2026. France consistently receives positive OECD Global Forum peer reviews on exchange effectiveness.

7.3 Other Forms of International Tax Collaboration

France participates in the OECD's International Compliance Assurance Programme (ICAP) for multilateral transfer pricing risk assessments. Joint tax audits are conducted under the Multilateral Convention and the EU joint audit framework introduced by DAC7.

France is a founding member of JITSIC, which facilitates real-time intelligence sharing against aggressive tax planning schemes. It also participates in the EU Fiscalis programme, supporting inter-administration co-operation and capacity building.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

France has a well-established mutual agreement procedure (MAP) programme. The legal bases include:

- bilateral treaty provisions modelled on Article 25 of the OECD Model;
- the EU Arbitration Convention for transfer pricing disputes;
- the EU Tax Dispute Resolution Directive (2017/1852), providing a right to arbitration if agreement is not reached within two to three years; and
- the MLI provisions.

The competent authority is the *Direction de la législation fiscale* (DLF). France actively uses MAPs for transfer pricing, permanent establishment attribution, and income characterisation disputes.

8.2 Application Deadlines

The deadline to submit a MAP request is generally three years from the first notification of the action resulting in taxation not in accordance with the applicable convention. This time limit applies under most bilateral treaties, the EU Arbitration Convention, the EU Tax Dispute Resolution Directive and the MLI. It is advisable to initiate MAP requests early, even before domestic appeal proceedings are completed, to preserve rights and ensure timely resolution.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is available through several instruments:

- the EU Arbitration Convention – specifically for transfer pricing disputes, with a two-year resolution deadline;
- the EU Tax Dispute Resolution Directive – broader in scope, with a default decision-making mechanism if states fail to agree; and
- the MLI Part VI – to which France opted in, accepting both the "last best offer" and "independent opinion" approaches, depending on the treaty partner.

General bilateral treaties do not include mandatory arbitration, though some newer conventions incorporate specific arbitration clauses.

9. Dispute Prevention

9.1 Advance Pricing Agreements

France has an active advance pricing agreement (APA) programme administered by the central administration. Unilateral, bilateral or multilateral APAs are available, with bilateral APAs strongly encouraged by the French authorities.

The process involves pre-filing meetings, a formal application with functional and economic analysis, competent authority negotiations for bilateral APAs, and agreements typically covering three to five years with possibility of roll-back. France is among the most active European countries in terms of APA activity.

9.2 Other Mechanisms

Tax Rulings

Tax rulings (*rescrits fiscaux*) provide binding advance positions from the tax authorities on specific situations, including cross-border transactions. This is a valuable tool for taxpayers seeking certainty on novel questions. Tax rulings in France are cost-free. Tax authorities have six months to answer (except for specific rulings).

Co-Operative Compliance

France operates a *relation de confiance* (co-operative compliance) programme for large enterprises, offering real-time transparency in exchange for faster issue resolution and reduced adversarial audits. The DGFiP has expressed interest in extending this programme to medium-sized enterprises.

GERMANY

Law and Practice



Contributed by:
Alexander Gottstein
MTR Legal Rechtsanwälte

Contents

1. Sources and Principles p.161
1.1 Domestic Sources of International Tax Law p.161
1.2 Hierarchy of Sources p.161
1.3 OECD Model/United Nations Influence on Treaty Practice p.161
1.4 Multilateral Instrument p.161

2. Territoriality, Residence and Permanent Establishment p.161
2.1 General Principle of Territorial Taxation p.161
2.2 Tax Residence of Individuals p.162
2.3 Taxation of Resident Individuals p.162
2.4 Taxation of Non-Resident Individuals p.162
2.5 Tax Residence of Legal Entities p.162
2.6 Definition of Permanent Establishment p.162

3. Taxation of Cross-Border Income p.163
3.1 Income From Immovable Property p.163
3.2 Business Profits p.163
3.3 Passive Income p.163
3.4 Capital Gains p.163
3.5 Employment Income p.163
3.6 Other Income p.163

4. OECD/G20 Global Tax Reform p.163
4.1 Pillar One – Amount B p.163
4.2 Pillar One – Amount A p.164
4.3 Pillar Two p.164
4.4 Specific Features or Deviations of Pillar Two p.164
4.5 Digital Services Tax p.164

5. Anti-Avoidance and Anti-Evasion Measures p.164
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.164
5.2 Anti-Avoidance Mechanisms p.165
5.3 Blacklists and Non-Cooperative Jurisdictions p.165
5.4 Reporting Obligations and Disclosure Regimes p.165
5.5 Role of Tax Authorities and Enforcement Measures p.165

6. Penalties and Sanctions p.165
6.1 Tax Penalties p.165
6.2 Criminal Penalties p.165
6.3 Interaction Between Tax and Criminal Procedures p.166

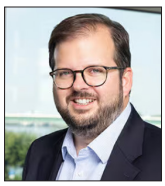
7. Administrative Co-Operation p.166
7.1 Legal Framework for Administrative Co-Operation p.166
7.2 Exchange of Information Clauses in Tax Agreements p.166
7.3 Other Forms of International Tax Collaboration p.166

8. Mutual Agreement Procedures and Arbitration p.166
8.1 Availability and Legal Basis p.166
8.2 Application Deadlines p.166
8.3 Mandatory Binding Arbitration p.166

9. Dispute Prevention p.166
9.1 Advance Pricing Agreements p.166
9.2 Other Mechanisms p.167

MTR Legal Rechtsanwälte is a modern, full-service business law firm with a strong focus on delivering strategic, solution-driven advice to companies, entrepreneurs and private clients. With a broadly positioned team of experienced, highly qualified lawyers, more than 5,000 clients, and eight offices, MTR Legal combines legal excellence with entrepreneurial thinking and international reach. The firm stands for proactive counsel, assertive representation and tailored solutions across a wide range of legal fields. Its fully digital, client-focused approach ensures fast response times, direct communication and reliable support whenever it matters most.

Author



Alexander Gottstein is a salary partner at MTR Legal who advises clients on tax law, private matters and inheritance-related issues. After graduating from Bucerius Law School in Hamburg, he gained international academic experience at Chicago-Kent College of Law in the USA, and hands-on practical training at the Regional Court of Cologne. His professional background includes working at renowned international law firms such as CMS Hasche Sigle and DLA Piper in Cologne, where he further developed his skills in labour law, litigation strategy and arbitration. Today, he advises national and international clients, including HNW individuals and family businesses, applying a strategic, solution-oriented approach to complex tax and succession matters.

MTR Legal Rechtsanwälte

Kurfürstendamm 11
10719 Berlin
Germany

Tel: +49 30 346469000
Email: berlin@mtrlegal.com
Web: www.mtrlegal.com

MTR LEGAL RECHTSANWÄLTE

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Key statutes include the Fiscal Code (*Abgabenordnung*, AO) as the procedural and general framework, the Income Tax Act (*Einkommensteuergesetz*, EStG), the Corporation Tax Act (*Körperschaftsteuergesetz*, KStG), the Trade Tax Act (*Gewerbesteuergesetz*, GewStG), and the Foreign Tax Act (*Außensteuergesetz*, AStG). Additional rules apply in specific areas (eg, withholding taxes, transfer pricing, and reporting/assistance obligations), often shaped by EU law and its domestic implementation.

In practice, administrative guidance issued by the Federal Ministry of Finance (*Bundesministerium der Finanzen*, BMF) and the Application Decree to the Fiscal Code (*Anwendungserlass zur Abgabenordnung*, AEAO) plays an important role. Case law – particularly of the Federal Fiscal Court (*Bundesfinanzhof*, BFH) – clarifies open legal concepts and delineates the interaction between domestic rules and treaty effects in individual cases.

Double taxation agreements (DTAs) apply domestically once they have been incorporated into German law through an enabling act pursuant to Article 59 (2) of the Basic Law (*Grundgesetz*, GG). Section 2 AO reflects the application priority of DTAs in tax matters – where Germany has restricted or waived its taxing rights under a treaty, the treaty provisions must be observed when assessing German tax.

1.2 Hierarchy of Sources

After incorporation, DTAs generally have the rank of ordinary federal statutes. Accordingly, the domestic conflict-of-laws principles apply: a later statute may, as a matter of German domestic law, deviate from an earlier treaty ("treaty override") if the legislature acts deliberately and with sufficient clarity (lex posterior).

The Federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) has held that a treaty override can, in principle, be constitutionally permissible. At the same time, it is critical to distinguish between the domestic and international planes: even if a treaty override is valid domestically, it may constitute a breach of international law (pacta sunt servanda) and trigger inter-state consequences. Article 25 GG concerns the "general rules of international law" (eg, customary international law) and is not the decisive basis for the domestic rank of DTAs; that role is played by Article 59 (2) GG.

1.3 OECD Model/United Nations Influence on Treaty Practice

Germany's treaty practice largely follows the OECD Model Tax Convention (OECD MTC) and its commentary. DTAs commonly reflect OECD structures for permanent establishments, business profits, withholding tax articles, and mutual agreement procedures (MAPs). However, each DTA is a bilateral instrument: differences in wording, protocol provisions, or special articles can materially affect taxing rights in a given case.

The UN Model can be influential in DTAs with developing or emerging economies, often through comparatively stronger source-state taxing rights. The decisive point is always the text of the relevant DTA, including its protocol.

1.4 Multilateral Instrument

Whether the Multilateral Instrument (MLI) modifies a particular German DTA (eg, anti-fragmentation rules, dependent agent PE concepts, or dispute-resolution provisions) depends on the positions taken by both contracting states (reservations and notifications) and on the applicable entry-into-effect rules ("matching"). Germany does not apply the MLI to all treaties, and effective dates may differ by treaty.

In practice, an explicit treaty-by-treaty review (using the OECD matching database/positions) is required before relying on any MLI outcome.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Germany generally taxes residents on their worldwide income. Non-residents are taxed only on specified German-source income. The key domestic rules are Section 1 EStG (unlimited versus limited tax liability)

and the catalogue of German-source income in Section 49 EStG, both of which are subject to overriding treaty rules aimed at eliminating double taxation.

2.2 Tax Residence of Individuals

Unlimited tax liability arises if an individual has a domicile (*Wohnsitz*) in Germany (Section 8 AO) or a habitual abode (*gewöhnlicher Aufenthalt*) in Germany (Section 9 AO). A habitual abode is typically assumed where the stay is not merely temporary; a stay of more than six months is treated as a statutory rule-of-thumb, with short interruptions usually not breaking continuity.

Where dual residence exists, the relevant DTA tie-breaker rules apply (typically: permanent home, centre of vital interests, habitual abode, nationality, and – if needed – mutual agreement). The wording of the specific treaty is decisive.

2.3 Taxation of Resident Individuals

Resident individuals are subject to German income tax on domestic and foreign income. Deductibility of expenses and the availability of personal reliefs are primarily determined by domestic law. DTAs typically provide relief through exemption or foreign-tax credit methods (often combined with progression mechanisms) and may require specific evidentiary and co-operative steps.

2.4 Taxation of Non-Resident Individuals

Non-residents are taxed in Germany only on enumerated categories of German-source income (in particular under Section 49 EStG), such as employment income exercised in Germany, income from German immovable property, and certain German-source investment income. DTAs may restrict Germany's taxing rights (eg, via the 183-day rule or special provisions for transport/aircraft personnel) and include method articles governing relief in the state of residence.

For internationally mobile groups (eg, air and sea personnel), special treaty provisions often apply; therefore, the relevant DTA (including its protocol) must be reviewed in each case.

2.5 Tax Residence of Legal Entities

Corporations are subject to unlimited German corporation tax if they have their registered seat (*Sitz*) or place of effective management (*Ort der Geschäftsleitung*) in Germany (Section 1 KStG). The registered seat is typically determined under company law/registration rules; the place of effective management depends on where day-to-day management decisions are actually made (as defined under the AO).

For German trade tax, the decisive question is whether a trade or business is carried on in Germany. In practice, trade tax liability generally requires a German permanent establishment (GewStG in conjunction with AO concepts).

2.6 Definition of Permanent Establishment

Under Section 12 AO, a permanent establishment is any fixed place of business or facility serving the enterprise. Section 12 AO lists typical examples (eg, place of management, branch, office, factory/workshop, warehouse, sales outlet). For construction/installation projects, domestic law applies a time threshold (generally more than six months).

The AEAO clarifies that, among other elements, a certain degree of permanence and a not-merely-temporary power of disposal over the premises are required. For home-office scenarios, the current administrative view emphasises that the home office of ordinary employees will generally not constitute the employer's PE for lack of sufficient power of disposal. However, the assessment is fact-specific and may differ, for example where the enterprise effectively controls the premises or uses the location as an integral fixed place of business.

From a treaty perspective, the PE definition in most German DTAs follows Article 5 OECD MTC (including exceptions for preparatory or auxiliary activities and dependent agent PEs). Deviations – such as different construction-site thresholds or agency concepts – are common and can be decisive.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

DTAs generally allocate taxing rights over income from immovable property to the state in which the property is situated. Under domestic law, residents are taxed on such income worldwide, while non-residents are taxed on German-source rental income and relevant gains (among other things, through Section 49 EStG). The relief mechanism in the residence state (exemption or credit) follows the applicable method article of the DTA.

3.2 Business Profits

Under the common Article 7 OECD MTC approach (reflected in many DTAs), the business profits of a non-resident enterprise are generally taxable in Germany only if the enterprise carries on business through a German PE. If a German PE exists, Germany may tax the profits attributable to that PE.

Profit attribution follows domestic rules and treaty principles. For associated enterprises, the arm's length principle is central; domestically, Section 1 AStG is the key provision.

3.3 Passive Income

Germany levies withholding tax on certain German-source payments – most notably on dividends, and in some cases also on royalties, depending on the domestic charging provision. DTAs typically limit withholding taxes through maximum rates or exemptions and require compliance with conditions and procedures (eg, residence certificates, relief at source, or refund procedures).

Because rates, definitions and protocol provisions differ from treaty to treaty, the relevant DTA articles (typically Articles 10, 11 and 12) and the applicable domestic relief procedure must be checked for each payment.

3.4 Capital Gains

The taxation of capital gains is determined under domestic law but is frequently allocated or restricted by DTAs. Many modern DTAs include special rules for shares in "property-rich" companies, allowing the situs state to tax gains where the value is derived predominantly from immovable property located there. Other gains are often allocated to the residence state. The specific treaty wording is decisive.

3.5 Employment Income

DTAs typically follow the principle that employment income may be taxed in the state where the employment is physically exercised (Article 15 OECD MTC). The 183-day rule results in exclusive residence-state taxation only if all the conditions are met (including the employer test and no bearing of remuneration by a PE in the work state).

For remote-work scenarios, two issues must be assessed: (i) whether taxing rights over employment income shift because the work is performed in another state; and (ii) whether the arrangement could create a PE for the employer. Under current German administrative practice, an ordinary employee's home office generally does not create a PE due to the employer's lack of power of disposal; however, fact patterns may differ, for example, where the home office is used on a lasting basis as a fixed business facility of the enterprise.

3.6 Other Income

Income not covered by specific treaty articles falls under the "other income" provision (often Article 21 OECD MTC) or special articles. Whether Germany may tax depends heavily on the treaty wording (eg, exclusive residence-state taxation versus retained source-state rights). Therefore, "residual" items require particularly careful treaty analysis.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

"Amount B" is an OECD simplification initiative intended to provide a standardised arm's length remuneration for certain baseline marketing and distribution activities. At OECD level, key deliverables include the February 2024 report and a consolidated report published in February 2025. Application is not automatic; jurisdictions must adopt/permit its use (effectively an "opt-in" approach), and the detailed conditions are defined in OECD guidance.

As of today, Germany has not implemented Amount B as a standalone, directly binding domestic rule. In practice, German transfer pricing law (in particular, Section 1 AStG) and applicable administrative principles remain the governing framework. Any later adoption of Amount-B elements would more likely occur through updated administrative guidance and/or targeted legislative amendments rather than through automatic direct effect.

4.2 Pillar One – Amount A

"Amount A" (reallocation of a share of the residual profits of very large multinational enterprises to market jurisdictions) requires a multilateral convention. That instrument has not, as far as can be seen, entered into force and has therefore not been implemented in Germany. Accordingly, there are currently no German implementing provisions that would apply Amount-A mechanisms in a binding manner. Until an international agreement is concluded, ratified and implemented, existing treaty allocation rules and transfer pricing rules remain applicable.

4.3 Pillar Two

Germany has implemented Pillar Two through the Minimum Tax Act (*Mindeststeuergesetz*, MinStG), which transposes the EU Minimum Tax Directive (Directive (EU) 2022/2523) and the OECD Pillar Two Global Anti-Base Erosion (GloBE) framework into domestic law. It applies to large multinational groups and large purely domestic groups with consolidated revenue of at least EUR750 million per annum and aims to ensure an effective minimum tax rate of 15% per jurisdiction.

The MinStG provides, in particular, for the Income Inclusion Rule (IIR), the Undertaxed Profits Rule (UTPR) and a domestic top-up tax consistent with the Qualified Domestic Minimum Top-Up Tax (QDMTT) concept. As a general matter, the rules apply for fiscal years beginning after 30 December 2023, while the UTPR typically applies later (generally for fiscal years beginning after 30 December 2024). The regime is accompanied by extensive reporting and filing obligations.

For financial reporting purposes, the German Commercial Code (*Handelsgesetzbuch*, HGB) clarifies that deferred taxes should not be recognised for differences arising solely from the application of the MinStG – or comparable foreign minimum tax regimes – Section 274 (3) HGB; and for consolidated accounts, Section 306 HGB).

4.4 Specific Features or Deviations of Pillar Two

Based on the current legislative design, the MinStG closely tracks the OECD GloBE framework and the EU Directive. Practical complexity arises less from "German deviations" and more from implementation details (eg, data availability, safe harbour options, transitional rules, and interactions with domestic taxes). Updates may occur through follow-on legislation and administrative guidance to incorporate OECD "Administrative Guidance" and to operationalise compliance.

4.5 Digital Services Tax

Germany has not introduced a standalone national Digital Services Tax (DST). The taxation of digital supplies is primarily addressed via VAT rules aligned with EU law (including destination-based taxation and one-stop-shop/OSS mechanisms for certain B2C supplies). In parallel, EU regulatory regimes (eg, the Digital Services Act) impose supervisory and compliance duties, but these are regulatory rather than tax measures.

A digital levy is discussed periodically at policy level. Legally, however, relevance arises only once formal legislation is enacted; political debates or proposals are not equivalent to current law.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Germany's general anti-abuse rule is Section 42 AO (abuse of legal arrangements). In essence, tax rules cannot be circumvented through inappropriate legal structures; key considerations include the appropriateness of the structure in light of the economic facts and whether there are substantial non-tax reasons.

In addition, numerous specific anti-avoidance rules apply, particularly in the AStG and in withholding-tax/relief regimes. In cross-border cases, treaty provisions may limit domestic re-characterisation effects; conversely, many modern DTAs contain their own anti-abuse elements (eg, a Principal Purpose Test).

5.2 Anti-Avoidance Mechanisms

Germany's controlled foreign company (CFC) regime (Sections 7 onwards AStG) attributes certain low-taxed passive income of foreign intermediary entities to German shareholders. Transfer pricing rules (Section 1 AStG) and extensive documentation/co-operation duties complement the framework as safeguards against profit shifting.

Hybrid mismatch arrangements are addressed through neutralisation rules, notably Section 4k EStG (anti-hybrid). Interest deductibility is restricted by the interest barrier (Section 4h EStG in conjunction with Section 8a KStG). Which rules apply in a given case depends on the specific structure, payment flows, and the relevant transitional/application provisions.

5.3 Blacklists and Non-Cooperative Jurisdictions

Germany has enacted the Tax Haven Prevention Act (*Steueroasenabwehrgesetz*, StAbwG), providing defensive measures against non-cooperative tax jurisdictions. The jurisdictions in scope are determined via a German ordinance list (*Steueroasen-Abwehrverordnung*, StAbwV), which is updated over time and does not simply replicate the EU blacklist. Therefore, the current version of the StAbwV must be checked before assuming specific defensive consequences (eg, restrictions on deductions or relief).

5.4 Reporting Obligations and Disclosure Regimes

DAC6 (EU Directive 2018/822) has been implemented in Germany through mandatory reporting for cross-border tax arrangements (Sections 138d to 138k AO), with application starting in 2020 under transitional rules. Country-by-Country Reporting (CbCR) applies under Section 138a AO for large groups, with detailed rules and responsibilities, often involving the Federal Central Tax Office (*Bundeszentralamt für Steuern*, BZSt).

Automatic exchanges of information are organised through EU and international instruments like the Common Reporting Standard/Foreign Account Tax Compliance Act (CRS/FATCA) and their domestic implementation. In practice, timelines, formats and responsibilities are frequently specified through BMF guidance and BZSt notices.

5.5 Role of Tax Authorities and Enforcement Measures

German tax authorities enforce international tax matters through assessments, wage-tax and withholding-tax procedures, tax audits, and information exchange. Specialised units (eg, large-case and group audit teams, transfer pricing audit teams) are commonly involved. International co-operation is based on DTA information-exchange provisions, EU mutual assistance instruments, and – where double taxation arises – mutual agreement and dispute-resolution procedures.

6. Penalties and Sanctions

6.1 Tax Penalties

In addition to the underlying tax, administrative surcharges and ancillary payments may apply, such as late filing penalties (Section 152 AO), late payment surcharges (Section 240 AO) or interest (eg, Section 233a AO). As a tax misdemeanour, "reckless tax understatement" (*leichtfertige Steuerverkürzung*) under Section 378 AO is particularly relevant and may be punished with an administrative fine.

Competence generally lies with the local tax offices (*Finanzämter*). In specific areas (eg, withholding tax relief, CbCR, DAC6 and other central international functions), the BZSt plays an important role.

6.2 Criminal Penalties

The core criminal provision for tax evasion is Section 370 AO. The basic offence provides for a fine or imprisonment of up to five years; in particularly serious cases, imprisonment ranges from six months to ten years (Section 370 (3) AO). Attempted tax evasion is also punishable.

Depending on the facts, additional offences under the Criminal Code (*Strafgesetzbuch*, StGB) may also be relevant (eg, document forgery), but they apply alongside, not in place of, tax offence provisions.

6.3 Interaction Between Tax and Criminal Procedures

Where indications of intentional tax offences arise, the tax administration typically involves its fines-and-criminal-matters units (*Bußgeld- und Strafsachenstellen*) and, where appropriate, the tax investigation service (*Steuerfahndung*). Criminal prosecution is conducted by the public prosecutor's office (*Staatsanwaltschaft*). Although tax assessment and criminal proceedings are formally separate, they are closely intertwined in practice (fact finding, evidence, procedural safeguards). In practice, affected persons should seek specialised professional advice at an early stage.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Germany's co-operation framework includes DTAs (in particular, information-exchange articles), OECD and Council of Europe instruments, and EU rules on administrative co-operation (mutual assistance). Domestic implementing provisions specify procedures, competent authorities and formats.

7.2 Exchange of Information Clauses in Tax Agreements

Information exchange may occur on request, spontaneously, or automatically (eg, through the CRS). Scope and limits (including proportionality, purpose limitation and confidentiality) are determined by the relevant instrument and domestic implementing rules. Operational details are frequently set out in BMF guidance and BZSt notices.

7.3 Other Forms of International Tax Collaboration

In addition to traditional mutual assistance, joint audits, co-operative compliance approaches and multilateral programmes have become increasingly important. Whether Germany participates in a particular collaborative format depends on the facts, the jurisdictions involved and the available legal basis.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Mutual agreement procedures (MAPs) are available under DTAs and EU instruments. They are designed to eliminate taxation that is not in accordance with a treaty. In German domestic law, implementation of a MAP – also into final assessments – is primarily enabled through Section 175a AO. The competent authority is typically the BZSt.

8.2 Application Deadlines

Many DTAs provide a filing deadline of three years from the first notification of the measure that results (or is likely to result) in taxation not in accordance with the treaty. The trigger date is case-specific (eg, a tax assessment notice, a withholding measure, or an audit adjustment). Therefore, the precise deadline rule in the relevant DTA or EU procedure must be checked in each case.

8.3 Mandatory Binding Arbitration

Binding arbitration may be available under certain DTAs, under the EU Arbitration Convention and/or the EU dispute-resolution framework. Access may be limited – for instance, in cases involving criminal aspects or certain anti-abuse situations – where the applicable instrument provides for such exclusions. The specific legal instrument (treaty protocol, EU regime, or MLI arbitration election) is decisive.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Germany operates an advance pricing agreement (APA) programme administered by the BZSt. The legal basis is Section 89a AO, and the AEAO provides detailed requirements on competence, application content, procedural steps, binding effect, co-operation duties, reporting and termination. Where the partner jurisdiction participates, bilateral or multilat-

eral APAs can provide significant certainty on transfer pricing outcomes.

9.2 Other Mechanisms

Further tools include binding rulings under Section 89 AO, factual agreements reached in tax audits to the extent legally permissible, and competent-authority agreements on treaty interpretation where a legal basis exists. Co-operative approaches and early alignment can, depending on the case, reduce the risk of double taxation.

GREECE



Law and Practice

Contributed by:
John C. Dryllerakis, John Papadakis and Nikos Kalantzis
Dryllerakis Law Firm

Contents

1. Sources and Principles p.170
1.1 Domestic Sources of International Tax Law p.170
1.2 Hierarchy of Sources p.170
1.3 OECD Model/United Nations Influence on Treaty Practice p.171
1.4 Multilateral Instrument p.171

2. Territoriality, Residence and Permanent Establishment p.171
2.1 General Principle of Territorial Taxation p.171
2.2 Tax Residence of Individuals p.172
2.3 Taxation of Resident Individuals p.172
2.4 Taxation of Non-Resident Individuals p.172
2.5 Tax Residence of Legal Entities p.172
2.6 Definition of Permanent Establishment p.173

3. Taxation of Cross-Border Income p.173
3.1 Income From Immovable Property p.173
3.2 Business Profits p.174
3.3 Passive Income p.174
3.4 Capital Gains p.175
3.5 Employment Income p.176
3.6 Other Income p.176

4. OECD/G20 Global Tax Reform p.177
4.1 Pillar One – Amount B p.177
4.2 Pillar One – Amount A p.177
4.3 Pillar Two p.177
4.4 Specific Features or Deviations of Pillar Two p.178
4.5 Digital Services Tax p.178

5. Anti-Avoidance and Anti-Evasion Measures p.179
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.179
5.2 Anti-Avoidance Mechanisms p.180
5.3 Blacklists and Non-Cooperative Jurisdictions p.180
5.4 Reporting Obligations and Disclosure Regimes p.181
5.5 Role of Tax Authorities and Enforcement Measures p.181

6. Penalties and Sanctions p.182
6.1 Tax Penalties p.182
6.2 Criminal Penalties p.182
6.3 Interaction Between Tax and Criminal Procedures p.183

7. Administrative Co-Operation p.183
7.1 Legal Framework for Administrative Co-Operation p.183
7.2 Exchange of Information Clauses in Tax Agreements p.184
7.3 Other Forms of International Tax Collaboration p.185

8. Mutual Agreement Procedures and Arbitration p.185
8.1 Availability and Legal Basis p.185
8.2 Application Deadlines p.185
8.3 Mandatory Binding Arbitration p.185

9. Dispute Prevention p.186
9.1 Advance Pricing Agreements p.186
9.2 Other Mechanisms p.186

Dryllerakis Law Firm is one of Greece's leading and steadily expanding law firms, established in 1971 and offering a comprehensive suite of legal services across all fields of Business Law. The firm distinguishes itself through its specialised, dedicated teams covering its core areas of corporate law and M&As, tax law and competition law, delivering a focused, "boutique" operational model. The firm's strategic structure ensures optimal organisation and the highest quality of service essential for navigating large and complex transactions. With a primary orientation towards consulting international clients, the firm leverages the active involvement of its senior partners in the management teams of numerous multinational and domestic companies, providing deep insights into both the legal and commercial dimensions of corporate transactions. The Firm's global reach is significantly enhanced by its active participation, as the exclusive member of Greece in TerraLex, one of the most recognised international networks of independent law firms.

Authors



John C. Dryllerakis is the managing senior partner of Dryllerakis Law Firm, active in all fields of business law, including specialisation in corporate law, M&As, tax, competition law and arbitration (both as lawyer and arbitrator). As a litigator, he is active in the Greek Supreme Administrative Court, especially in tax litigation. He has extensive experience in investment incentives and privatisations, having acted in many cases for both the investors and the Greek State. John also participated in law-making committees for the amendment of the legal framework regarding tax, competition and corporate law and privatisations. He has been general counsel and general tax counsel of the Exxon affiliates in Greece and of Shell Hellas, member of their board of directors and management teams.



Nikos Kalantzis is a junior associate at Dryllerakis Law Firm, specialising in tax and accounting law. With extensive experience across all stages of tax controversy, he represents both corporate clients and individuals before tax authorities and domestic administrative courts. He provides comprehensive tax advice covering the full spectrum of tax law, including income tax, VAT, transfer pricing, corporate restructurings and double taxation treaties.



John Papadakis is a partner at Dryllerakis Law Firm. He specialises in national and European tax law, as well as administrative and accounting law. With extensive experience in resolving tax disputes, John represents both legal entities and individuals before tax authorities and administrative courts at all levels. He provides comprehensive tax advice, covering a wide range of tax law areas, including income tax, VAT and the application of double taxation treaties. John also possesses significant expertise in international tax law, including transfer pricing and corporate transformations at both national and international levels. He has authored numerous articles in respected legal publications, illuminating the dynamic, ever-evolving tax landscape.

Dryllerakis Law Firm

5 Chatzigianni Mexi Street,
Athens, GR 115 28, Greece

Tel: +30 211 000 3456
Email: lawoffice@dryllerakis.gr
Web: dryllerakis.gr



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The sources of international tax law in Greece are determined by a constitutionally structured hierarchy of norms comprising the Constitution, European Union law, ratified international agreements, domestic legislation, administrative guidance and judicial interpretation.

The constitutional framework is foundational. Article 78 of the Greek Constitution enshrines the principle of legality in taxation, requiring that the essential elements of any tax be established by formal statute. Article 4 (5) establishes the principle of equality in public burdens according to ability to pay, while the general principle of proportionality also applies in tax matters.

Of particular importance for international taxation is Article 28 (1), which provides that international conventions, once ratified by statute and entered into force, form an integral part of domestic law and prevail over any contrary statutory provision. Consequently, double taxation treaties (DTT) and other ratified tax treaties have supra-legislative force in the Greek legal order, although they remain subordinate to the Constitution.

European Union law constitutes a distinct and binding source of international tax law. As an EU Member State, Greece is bound by the Treaties, secondary legislation and the jurisprudence of the Court of Justice of the European Union. EU law enjoys primacy over conflicting domestic provisions and significantly influences the design and interpretation of Greek international tax rules.

Administrative guidance is issued by the Independent Authority for Public Revenue (AADE) in the form of circulars, interpretative guidelines and other instructions concerning the application of domestic tax law and tax treaties. Such instruments are binding on the tax administration but do not formally bind the taxpayers nor the Courts.

Judicial interpretation plays a central role in shaping international tax law in Greece. The Council of State (Supreme Administrative Court) is the highest judicial authority in tax matters and has developed substantial jurisprudence on the interpretation of treaty provisions, the interaction between domestic law and DTAs, the application of anti-avoidance principles and the impact of EU law on direct taxation. In interpreting tax treaties, Greek courts frequently rely on the OECD Model Convention and its Commentary as persuasive interpretative materials, in accordance with the principles reflected in the Vienna Convention on the Law of Treaties.

Greece maintains an extensive network of double taxation treaties, numbering 58 treaties in force. The structure and wording of Greek DTT generally follow the OECD Model Convention, particularly with respect to provisions on permanent establishment, business profits, associated enterprises, dividends, interest, royalties and exchange of information.

1.2 Hierarchy of Sources

In Greece, domestic and international sources of tax law are hierarchically structured and their relationship

is governed by constitutional principles, EU obligations and statutory rules.

At the highest level, the Constitution establishes the framework for taxation, enshrining the principles of legality, equality and proportionality. Importantly, Article 28 (1) provides that ratified international treaties, including double taxation agreements (DTAs), become an integral part of domestic law and prevail over conflicting domestic legislation, though they remain subordinate to the Constitution itself.

European Union law occupies a similarly elevated position. As an EU Member State, Greece is bound by EU Treaties, secondary legislation and the case law of the Court of Justice of the European Union. EU law takes precedence over conflicting domestic provisions and heavily influences the design and interpretation of Greek international tax rules, including the transposition of directives such as ATAD I & II, the Parent-Subsidiary Directive and the Interest and Royalties Directive.

1.3 OECD Model/United Nations Influence on Treaty Practice

Greece's double taxation treaty (DTT) network is largely aligned with the OECD Model Tax Convention, particularly regarding permanent establishment, business profits, associated enterprises, dividends, interest, royalties and exchange of information. Greek treaties generally follow OECD standards, including reliance on the arm's-length principle for intra-group transactions and the allocation of taxing rights between source and residence jurisdictions.

Importantly, Greece does not use the UN Model Convention in any of its DTTs.

1.4 Multilateral Instrument

1.4 Multilateral Instrument

Greece is a signatory to the Multilateral Instrument (MLI) and has fully ratified it. The country signed the MLI on 7 June 2017 and ratification was completed through Law 4768/2021. The instrument of ratification was deposited with the OECD on 30 March 2021 and the MLI entered into force for Greece on 1 July 2021.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

General Principle

The general principle governing the territorial scope of taxation in Greece is based on a combination of the residence and source principles, as codified in the Income Tax Code (Law 4172/2013).

Under Greek law, tax residence is the primary determinant of unlimited tax liability. Individuals or legal entities that are Greek tax residents are subject to taxation on their worldwide income.

Non-residents are subject to taxation in Greece solely on income derived from Greek sources. Greek-source income includes business profits earned through a permanent establishment in Greece, employment exercised in Greece, income from immovable property located in Greece and certain passive income such as dividends, interest and royalties arising from Greek activities.

The scope of Greek-source taxation may be limited by the provisions of applicable double taxation agreements, particularly regarding business profits, permanent establishments and withholding taxes.

Special Territorial Considerations

Greece does not operate a system of separate tax regimes comparable to those found in certain other jurisdictions. The Greek tax system applies uniformly throughout the national territory.

However, certain specific territorial regimes exist within the constitutional and EU framework, as follows.

- Mount Athos (Agion Oros): Under Article 105 of the Greek Constitution, the autonomous monastic community possesses administrative independence. While Greek law generally applies, historical and administrative particularities may affect the application of certain taxes.
- Aegean Islands and Insular Regions: Certain islands benefit from reduced VAT rates and excise exemptions, in line with EU law provisions and regional development policies. These regimes are

primarily indirect-tax measures but have indirect effects on the overall tax burden.

2.2 Tax Residence of Individuals

Individuals are deemed tax residents of Greece where they maintain in Greece a permanent or principal residence, a habitual abode, or the centre of their vital interests. The centre of vital interests is determined on the basis of an overall evaluation of the relevant facts and circumstances, including, inter alia, family ties, professional activities, business interests and financial connections.

An individual who is physically present in Greece for more than 183 days in aggregate within any twelve-month period is considered a Greek tax resident as from the first day of presence in Greece, subject to an exception for individuals present exclusively for touristic, medical, therapeutic, or similar private purposes.

In addition, individuals serving abroad as consular, diplomatic, or other public officials of equivalent status, as well as Greek nationals employed in the public sector and assigned to duties abroad, are considered as Greek tax residents.

The above apply subject to the terms of any applicable double taxation treaty.

2.3 Taxation of Resident Individuals

Individuals who qualify as tax residents of Greece are subject to taxation on their worldwide income, irrespective of the source from which the income arises.

With respect to foreign-source income, Greece provides relief for double taxation. Unilateral relief is generally available in the form of a foreign tax credit for income tax paid abroad, up to the amount of Greek tax attributable to that income. In addition, Greece has an extensive network of double taxation treaties, which may allocate taxing rights between jurisdictions and provide for credit or exemption mechanisms, depending on the treaty provisions.

Special tax regimes may apply in specific cases, such as the alternative taxation regimes introduced in recent years for high-net-worth individuals transferring their tax residence to Greece, foreign pensioners and certain employees or self-employed individuals relocating to Greece, subject to statutory conditions.

2.4 Taxation of Non-Resident Individuals

Individuals who are not tax residents in Greece are subject to tax in Greece only on income arising from Greek sources.

Greek-source income generally includes, inter alia:

- employment income derived from services rendered in Greece;
- business income attributable to a permanent establishment or fixed base maintained in Greece, or otherwise derived from business activities carried out in Greece;
- income from immovable property situated in Greece, including rental income and capital gains from the disposal of Greek real estate;
- capital income arising in Greece, such as dividends distributed by Greek entities, interest paid by Greek residents or permanent establishments and royalties paid for the use of rights within Greece; and
- capital gains from the transfer of shares or other participations in Greek entities, subject to the specific conditions set out in the Income Tax Code.

Greek-source income of non-resident individuals is taxed in accordance with the rules applicable to the relevant income category. Certain types of income (eg, dividends, interest and royalties) are typically subject to withholding tax at source, which may exhaust the Greek tax liability where provided by law. Other income, such as rental income or business profits, is subject to tax by filing a Greek income tax return.

The taxation of non-residents is subject to the provisions of any applicable double taxation treaty, which may limit Greece's taxing rights or provide for reduced withholding tax rates or exemptions.

2.5 Tax Residence of Legal Entities

A legal entity is considered a tax resident of Greece for any given tax year if any of the following criteria are met:

- the entity has been incorporated or established in accordance with Greek law;

- the entity has its registered (statutory) seat in Greece; or
- the entity's place of effective management is located in Greece at any time during the tax year.

The place of effective management is determined in accordance with both domestic provisions and OECD principles, taking into account factual and substantive elements, such as:

- the place where day-to-day management is exercised;
- the place where strategic decisions are taken;
- the place where the annual general meeting of shareholders or partners is held;
- the place where the accounting books and records are kept;
- the place where meetings of the board of directors or other executive management body are held; and
- the residence of the members of the board of directors or other executive management body.

In conjunction with the above, the residence of the majority of shareholders or partners may also be considered. No single factor is conclusive; instead, the totality of facts and circumstances is assessed.

Entities that qualify as Greek tax residents are liable for corporate income tax on their worldwide profits, including profits generated outside Greece. Conversely, entities that are not tax residents in Greece are taxed only on income arising from Greek sources, as long as such profits are attributable to a Greek permanent establishment.

2.6 Definition of Permanent Establishment

Under the Greek Income Tax Code (Law 4172/2013), the concept of a permanent establishment ("PE") is defined broadly and in line with internationally accepted principles.

A permanent establishment is generally defined as a fixed place of business through which the business of an enterprise is wholly or partly carried on. The statutory definition expressly includes, inter alia, a place of management, branch, office, factory, workshop, warehouse, mine, oil or gas well, quarry or any other place of extraction of natural resources. A building site or a construction, installation or assembly project constitutes a PE where it lasts for more than three months.

The domestic definition also encompasses a dependent agent PE, arising where a person acting on behalf of an enterprise has and habitually exercises authority to conclude contracts in the name of that enterprise. Activities carried out by an independent agent acting in the ordinary course of its business do not give rise to a PE.

The Greek domestic definition largely reflects the OECD Model Tax Convention; however, it has not formally incorporated the amendments introduced by BEPS Action 7 (in particular, the expanded dependent agent rule and the anti-fragmentation provisions). Notably, the domestic threshold for construction sites (three months) is shorter than the twelve-month threshold provided under Article 5 of the OECD Model Convention.

In the event of a conflict between domestic law and the provisions of an applicable double taxation treaty, the treaty provisions prevail.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Income derived from immovable property situated in Greece is subject to taxation irrespective of the taxpayer's residence status. The applicable tax treatment depends on whether the recipient is an individual or a legal entity, as outlined below.

- Individuals (tax residents): Greek tax resident individuals are taxed on their worldwide income, including rental income from immovable property. Rental income derived from immovable property is taxed separately from employment or business income at progressive rates. Certain expenses are deemed covered by a statutory deduction mechanism, whereas specific categories of income (eg, compensation for early lease termination) are treated as rental income. Capital gains derived from the transfer of Greek real estate are, in principle, subject to capital gains tax, although the applica-

tion of this tax has been suspended in recent years pursuant to successive legislative extensions.
- Individuals (non-tax residents): Non-resident individuals are subject to Greek income tax only on income sourced in Greece. Rental income from immovable property located in Greece is therefore taxable in Greece under the same progressive rates applicable to residents. Non-residents are required to file a Greek income tax return for such income. Capital gains from the disposal of Greek immovable property are likewise taxable in Greece (subject to the current suspension of the capital gains tax regime).
- Legal entities: Greek tax resident legal entities are taxed on their worldwide income, including income from immovable property, at the standard corporate income tax rate (22%). Non-resident legal entities are taxed in Greece on income derived from immovable property situated in Greece, at the same corporate income tax rate applicable to resident entities.

The above treatment is subject to the provisions of any applicable double taxation treaty. However, under most treaties concluded by Greece, income from immovable property may be taxed in the state in which the property is situated, in accordance with Article 6 of the OECD Model Tax Convention.

3.2 Business Profits

Business taxation in Greece is imposed on the net profits from business activities, determined based on accounting results prepared under Greek Accounting Standards and adjusted in accordance with the provisions of the Income Tax Code (Law 4172/2013).

Business profit is defined, in accordance with Article 21 of Law 4172/2013 (Income Tax Code), as the total income derived from business transactions, after deducting allowable business expenses, tax-deductible depreciation and provisions for bad debts.

Subsequently, tax adjustments are applied, including the disallowance of non-deductible expenses, limitations on interest deductibility under the thin capitalisation rules, transfer pricing adjustments to ensure compliance with the arm's length principle and specific rules for depreciation and loss carry forwards.

Business profits of self-employed individuals are taxed at progressive personal income tax rates, ranging from 9% to 44%. Corporate profits are taxed at the standard corporate income tax rate of 22%. Tax losses may generally be carried forward for up to five years to offset future profits, subject to statutory limitations.

In addition, Greek corporate taxpayers are required to make advance payments of corporate income tax for the following fiscal year. These prepayments are calculated as a percentage of the current year's tax liability (typically 80%) and are credited against the final tax due for the next fiscal year.

3.3 Passive Income

Passive income, including dividends, interest and royalties, is generally subject to withholding tax at source, with the rate and treatment depending on the type of income and the recipient's tax residence.

Greece has an extensive network of double taxation treaties, generally based on the OECD Model Tax Convention. Treaty provisions override domestic law where applicable and may reduce or eliminate withholding taxes on dividends, interest and royalties.

Dividends

Individuals

Dividends received by resident or non-resident individuals are generally subject to 5% withholding tax, which exhausts their final income tax liability.

Legal entities

In the case of corporate recipients, it is first necessary to determine whether the conditions of Article 63 (1) of the Income Tax Code, implementing the EU Parent-Subsidiary Directive 2011/96/EU (eg, minimum shareholding percentage, minimum holding period, etc), are met. If not, the following distinctions apply.

- Dividends paid to Greek legal entities are subject to withholding tax, which does not exhaust the final tax liability. These dividends are treated as business income (Article 47 (2) of the Income Tax Code) and the withheld tax is credited against the final corporate income tax. If the withheld tax exceeds

the tax due, the excess is refunded (Article 68 (3) of the Income Tax Code).
- Dividends paid to foreign legal entities without a PE in Greece are subject to withholding tax, which exhausts the recipient's final tax liability, subject to the provisions of any applicable double taxation treaty.

Interest

Individuals

Interest earned by resident or non-resident individuals is subject to 15% withholding tax, which exhausts the individual's final income tax liability (Articles 37 (4) and 64 (3) of the Income Tax Code).

Legal entities

In the case of corporate recipients, it is first necessary to determine whether the conditions of Article 63 (2) of the Income Tax Code, implementing the EU Directive 2003/49/EC (Interest and Royalties Directive), are met (eg, minimum participation threshold, minimum holding period etc). If not, the following distinctions apply.

- Interest paid to Greek legal entities is subject to 15% withholding tax, which does not exhaust the final tax liability. This interest is treated as business income (Article 47 (2) of the Income Tax Code) and the withheld tax is credited against the final corporate income tax. If the withheld tax exceeds the tax due, the excess is refunded (Article 68 (3) of the Income Tax Code).
- Interest paid to foreign legal entities without a PE in Greece is subject to withholding tax, which exhausts the recipient's final tax liability, subject to the provisions of any applicable double taxation treaty.

Royalties

Individuals: Royalties earned by resident or non-resident individuals are subject to 20% withholding tax, which exhausts the individual's final income tax liability (Articles 39 (2) and 64 (3) of the Income Tax Code).

Legal entities

In the case of corporate recipients, it is first necessary to determine whether the conditions of Article 63 (2) of the Income Tax Code, implementing the EU Directive 2003/49/EC (Interest and Royalties Directive), are met (eg, minimum participation threshold, minimum holding period etc). If not, the following distinctions apply:

- Royalties paid to Greek legal entities are not subject to a withholding tax (Article 62 (5) of the Income Tax Code). Said royalties are treated as business income (Article 47 (2) of the Income Tax Code) and taxed accordingly upon filing of the annual income tax return.
- Interest paid to foreign legal entities without a PE in Greece is subject to withholding tax, which exhausts the recipient's final tax liability, subject to the provisions of any applicable double taxation treaty.

3.4 Capital Gains

Capital Gains from the Sale of Immovable Property

Individuals

Capital gains from the sale of real estate located in Greece are generally taxable, though the application of the tax has been suspended in recent years through successive legislative measures. When applicable, gains are calculated as the sale proceeds minus acquisition cost and allowable expenses and taxed at a flat rate of 15%.

Legal entities

Capital gains from the sale of immovable property incurred by Greek legal entities are not subject to a withholding tax. It is treated as business income (Article 47 (2) of the Income Tax Code) and taxed accordingly upon filing of the annual income tax return.

Capital gains from the sale of immovable property incurred by foreign legal entities without a PE in Greece are not subject to Greek taxation, as they are considered business profits. Taxation arises only if the gains are attributable to a Greek PE.

Capital Gains from the Sale of Shares and Other Derivatives

Individuals

Gains from the sale of shares listed on a regulated market are subject to 15% capital gains tax, provided that the seller holds more than 0.5% of the total shares of the company. Gains from unlisted shares or other derivatives are also subject to 15% capital gains

tax. Tax is generally payable upon filing of the annual income tax return.

Legal entities

Capital gains from the sale of shares or other derivatives incurred by Greek legal entities are not subject to withholding tax. They are treated as business income (Article 47 (2) ITC) and taxed upon filing of the annual corporate tax return. Certain exemptions may apply, such as the participation exemption for corporate shareholders holding a qualifying percentage of shares for a minimum period.

Capital gains from the sale of shares or other derivatives incurred by foreign legal entities without a PE in Greece are not subject to Greek taxation, as they are considered business profits. Taxation arises only if the gains are attributable to a Greek PE.

3.5 Employment Income

Individuals who are tax residents of Greece are taxed on their worldwide employment income, which includes salaries, wages, bonuses, allowances, benefits in kind and other remuneration received in respect of services rendered. The income is subject to progressive personal income tax rates, currently ranging from 9% to 44%.

Non-resident individuals are taxed in Greece only on employment income sourced in Greece, ie, income derived from services physically performed in Greece.

An individual temporarily assigned to Greece may become liable to Greek tax if they are physically present in Greece for more than 183 days in any twelve-month period, unless a specific exemption applies.

Double taxation treaties generally govern the allocation of taxing rights between Greece and the country of residence or the employer, potentially providing relief from double taxation.

Regarding remote work, Greek tax law does not contain rules specifically addressing teleworking arrangements. However, employment income derived from work performed physically in Greece is considered Greek-source income and is taxable in Greece, irrespective of whether the employer is foreign. For Greek tax residents, income from remote work with foreign employers is also fully taxable in Greece. For corporations, there may be permanent establishment implications if remote working arrangements create a fixed place of business in Greece, potentially resulting in Greek corporate tax obligations for the foreign employer.

3.6 Other Income

While Greece broadly follows OECD principles for employment, business profits, capital gains and passive income, it also applies special taxation rules, which create exceptions to the general framework and often involve flat rates, presumptive calculations, or special regimes not explicitly covered in the OECD Model Convention. More specifically:

Special Regimes for High-Net-Worth Individuals, Pensioners and Expatriates

Greece has introduced special tax regimes aimed at attracting high-net-worth individuals, foreign pensioners and other expatriates who relocate their tax residence to Greece. These regimes provide preferential tax treatment that diverges from standard OECD residence-based taxation principles.

For example, qualifying individuals may be eligible for:

- flat taxation on foreign-source income – certain types of income earned abroad (such as dividends, interest, royalties, or employment income) may be taxed at a fixed annual amount or a preferential flat rate, rather than being included in the standard progressive tax scale;
- exemption or reduction of Greek wealth-related taxes – this can include relief from taxation on foreign pensions or income derived from assets held abroad; and
- simplified reporting obligations – certain regimes provide reduced administrative and reporting requirements for qualifying expatriates.

These regimes are designed to encourage relocation and investment in Greece, but they represent a departure from the OECD Model's standard worldwide income taxation principle, as foreign-source income may be taxed at special flat rates or partially exempted.

Imputed Income and Deemed Income

In addition to conventional forms of income, Greece taxes certain types of imputed or deemed income, calculated on a presumptive rather than an actual basis. Key examples have been outlined below.

- Notional rental income from real estate ownership: Owners of real property may be deemed to earn rental income even if the property is not actually rented out. This notional income is calculated using statutory coefficients based on property type, location and size and is included in the individual's taxable income.
- Benefits from the use of company-owned assets: Employees or executives may be taxed on the value of private use of company cars, housing, or other assets, which is treated as a non-cash benefit in kind. The valuation of such benefits is determined by fixed rules and included in taxable income.
- Other deemed income categories: In addition to actual income earned by individuals, Greek tax law provides for the taxation of income based on deemed income or "living standards rules" (Articles 31–33 of the Income Tax Code). These rules constitute an indirect method of estimating income, allowing the Greek tax authorities to tax an individual's ability to maintain a certain standard of living, even if the actual declared income is insufficient or does not fully reflect economic capacity.

This system allows the Greek tax authorities to capture economic benefits arising from ownership or use of assets, even when no direct revenue is realised. Unlike the OECD Model, which generally taxes income based on actual receipts or accruals, Greece's imputed income rules extend the tax base to cover notional or presumed income, effectively broadening the scope of taxable income.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As of now, Greece has not formally adopted Amount B of the OECD/G20 Two–Pillar Solution into its domestic law or published any official domestic legislative measures implementing it. The Greek transfer pricing framework, as set out in its Income Tax Code and administrative practice, continues to follow the traditional arm's length principle, as reflected in the OECD Transfer Pricing Guidelines and domestic statutory rules, without a specific Amount B provision in national legislation.

The Greek transfer pricing regime is generally aligned with the OECD Transfer Pricing Guidelines and the arm's–length principle and the Greek tax authorities require documentation consistent with the OECD three–tiered approach (master file, local file and country–by–country reporting). However, no domestic safe harbour, simplified pricing matrix, or Amount B rule has yet been implemented.

Under the current practice, Greece applies traditional transfer pricing methods to related–party transactions and any reference to OECD guidance (including Amount B) is interpretative and incorporated by reference rather than directly legislated.

If Greece decides to implement Amount B in the future, any domestic rules would need to be enacted through legislation or regulation and could potentially include local adaptations, as jurisdictions have discretion in how to integrate the simplified approach into their domestic transfer pricing systems.

4.2 Pillar One – Amount A

Greece, as a member of the OECD/G20 Inclusive Framework on BEPS, has been engaged in international tax reform discussions, but it has not yet formally adopted or implemented Pillar One Amount A into its domestic legal regime and there is no official Greek government statement specifically articulating a national "position" on Amount A separate from its participation in the Inclusive Framework. Greece's international tax policy has instead prioritised implementation of Pillar Two (global minimum tax) and other BEPS instruments, consistent with its obligations as an EU Member State.

4.3 Pillar Two

Greece has implemented the global minimum tax under Pillar Two, primarily by transposing the EU Global Minimum Tax Directive (Council Directive 2022/2523) into domestic law through Law 5100/2024. This implemen-

tation brought aspects of the OECD/G20 Pillar Two global minimum tax framework into Greek legislation, in line with the EU's coordinated approach to ensure a minimum effective level of taxation for large multinational enterprise groups and large domestic groups.

Law 5100/2024 introduces two interrelated mechanisms, the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR), collectively referred to as the GloBE rules. Under these rules, an additional amount of tax, known as a top-up tax, is collected whenever the effective tax rate of an MNE or large domestic group in a jurisdiction falls below 15%.

In addition, the Law establishes a framework for a Domestic Minimum Top-up Tax (DMTT), designed to qualify under the Pillar Two rules. The legislation also provides for several safe harbour provisions, including:

- the Qualified DMTT (QDMTT) safe harbour;
- transitional Country-by-Country Reporting (CbCR) safe harbours; and
- the UTPR transitional safe harbour.

The entry into force of the CbCR and UTPR safe harbours is contingent upon the issuance of a Ministerial Decision, which will determine the effective dates. The Law explicitly states that these safe harbours are to be interpreted in accordance with the OECD Model Rules.

4.4 Specific Features or Deviations of Pillar Two

The Greek legislation (Law 5100/2024) closely follows the OECD/G20 Pillar Two framework; however, there are some notable deviations and limitations compared with the OECD model rules.

- First, the Law implements only the elections provided under the EU Directive, without incorporating the optional elections or clarifications contained in the OECD Administrative Guidance. As a result, certain features available under the OECD framework (such as additional flexibility in applying the top-up tax or specific treatments under the IIR/UTPR) are not currently reflected in Greek domestic law.
- Second, while the Law introduces the Qualified Domestic Minimum Top-up Tax (QDMTT) and safe harbours (including the CbCR and UTPR transitional safe harbours), the entry into force of these safe harbours depends on Ministerial Decisions, leaving some practical aspects of implementation uncertain.
- Third, although the safe harbours are to be interpreted in accordance with the OECD Model Rules, it is not explicitly stated whether the Greek Tax Administration is bound by the OECD Administrative Guidance for the remaining Pillar Two provisions. This creates some discretion in interpretation and potential divergence from OECD guidance in practice.
- Finally, by following the EU Directive rather than the OECD text directly, the Greek rules align with EU coordination measures, which may limit certain optional OECD provisions, particularly in relation to transitional elections and adjustments for multinational enterprises operating across multiple EU jurisdictions.

4.5 Digital Services Tax

Greece does not currently impose a national Digital Services Tax (DST). Nonetheless, the country has been actively engaged in discussions within the European Union on adopting a common DST, which would target revenues from digital activities, including online advertising and digital intermediation services.

In parallel, Greece participates in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The BEPS 2.0 initiative seeks to address the tax challenges arising from the digitalisation of the economy, including the reallocation of taxing rights to market jurisdictions and the establishment of a global minimum tax. The implementation of these multilateral measures is expected to reduce the need for unilateral digital services taxes. However, the rollout of BEPS 2.0, particularly Pillar One, has been slower than initially anticipated, creating some uncertainty regarding the timing and scope of a coordinated international solution.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax Fraud and Tax Evasion (Criminal Offences)

Under Greek law, tax evasion is considered a criminal offence and acts constituting intentional evasion are prosecuted both administratively and criminally. The following examples are established under Article 79 of the Greek Code of Tax Procedure (Law 5104/2024).

A tax evasion crime arises where a person, with the intent to avoid payment of tax, conceals taxable income from any source by failing to file returns, submitting false returns, or entering fictitious expenses in the accounts to reduce the tax base. It also includes failure to pay or incorrect payment of VAT, withholding taxes, or other levies and obtaining refunds through fraudulent concealment of facts.

The issuance, acceptance or falsification of false or fictitious tax documents (eg, invoices) is treated as tax evasion if it is connected with tax evasion.

Thresholds for classifying conduct as a felony vary by tax type (eg, EUR100,000 for income tax, EUR50,000 for VAT), with higher thresholds leading to more severe penalties.

Tax Avoidance and Abusive Tax Planning

The concepts of tax avoidance and abusive tax schemes are addressed in Greek domestic tax law through anti–abuse rules, with a focus on arrangements that seek to artificially reduce tax liabilities without overtly violating specific statutory provisions, as outlined below.

Tax avoidance is generally understood in academic and legal doctrine as the use of legal means to achieve tax outcomes that reduce or eliminate tax liability, but it can verge on abuse when it exploits gaps, loopholes, or unintended advantages in the law.

To counter such arrangements, Greek law incorporates a General Anti–Abuse Rule (GAAR) in the Tax Procedure Code (Article 39 of Law 5104/2024, formerly Article 38 of Law 4174/2013). Under this rule, the Greek Tax Administration may disregard any arrangement or series of arrangements that have been established with the main purpose or one of the main purposes of obtaining a tax advantage that frustrates the object or purpose of the applicable tax provisions. Such rules target artificial structures that lack economic substance.

The GAAR is broad in scope and may be applied even in the absence of a specific statutory anti–avoidance provision targeting a particular type of scheme. It functions as a substance–over–form doctrine, allowing tax authorities to recharacterize or disregard artificial arrangements for tax purposes.

Indicators and Criteria for Abuse or Evasion

In practice, Greek tax authorities and courts look to a range of factual and legal indicators to distinguish legitimate tax planning from abusive schemes or evasion, such as:

- absence of economic substance – transactions executed primarily for tax benefit with little or no commercial rationale other than tax savings (substance vs form);
- fictitious documentation – use of fake invoices or records, or manipulation of accounting entries to artificially reduce taxable income;
- concealment of income – failure to report or deliberately under–report cross–border income or taxable events; and
- complex cross–border structures without business purpose – arrangements involving related parties in low–tax jurisdictions that lack a valid commercial justification (while specific criteria are not codified in a single statutory list, interpretation under the GAAR allows tax authorities to challenge such structures if the main purpose is tax avoidance).

In the context of cross–border transactions, Greece also applies EU Anti–Tax Avoidance Directive (ATAD) rules (eg, interest limitation, controlled foreign company rules) and transfer pricing rules to counter BEPS–type schemes and ensure arm's length treatment.

5.2 Anti-Avoidance Mechanisms

Greek tax legislation has incorporated a number of anti-tax avoidance rules, both general (general anti-abuse rule – GAAR) and targeted ones (targeted anti-abuse rule – TAAR). These are as follows.

GAAR Provided Under Article 39 of Law 5104/2024

GAAR was initially based on the European Commission's Recommendation on Aggressive Tax Planning (EU GAAR), published on 6 December 2012 (C(2012) 8806 final). By virtue of Article 13 of Law 4607/2019, GAAR was amended to transpose Article 6 of the Anti-Tax Avoidance Directive (EU) 2016/1164 (ATAD).

GAAR provides that tax authorities should ignore any arrangement or series of arrangements that have been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or the purpose of the applicable tax law and are not genuine, having regard to all relevant facts and circumstances.

TAAR for Tax Losses Forfeiture Provided Under Article 27 of Law 4172/2013

TAAR refers to the fact that it is not possible to carry forward losses in the event of a change of more than 33% of the direct or indirect holding or the voting rights in a legal person or entity, provided that there is also a change of activity of the legal person or entity that exceeded 50% of its turnover in relation to the immediately preceding tax year from the change of shareholding structure or voting rights.

TAAR for Corporate Restructurings Provided Under Article 56 of Law 5162/2024

TAAR on corporate restructurings is aligned with the provisions of the 2009/133/EU Directive and applies to all restructurings (mergers, full or partial demergers, spin-offs, share exchanges or transfers of the registered seat) effected under Articles 47 to 55 of Law 5162/2024. By virtue of TAAR, to the extent that tax avoidance or tax evasion is identified as the main or one of the main objectives of the companies under restructuring, all benefits granted in accordance with the above-mentioned articles are fully or partially disallowed. The fact that a transaction is not performed for valid economic reasons, such as restructuring or rationalisation of activities, may constitute evidence that the main or one of the principal objectives of the transaction is tax avoidance or tax evasion.

Other Rules

There are other anti-avoidance rules included in the Greek tax legislation, such as thin capitalisation rules (see under Section IX.vi), as well as CFC rules, which, in general, provide that the undistributed passive income of a foreign legal person or entity satisfying certain conditions shall be attributed to and taxed by the Greek resident controlling shareholder.

5.3 Blacklists and Non-Cooperative Jurisdictions

Greece maintains two distinct lists of jurisdictions for tax purposes. The first list includes non-cooperative jurisdictions, comprising states or territories that fail to meet international standards on tax transparency, exchange of information, or compliance with anti-BEPS measures. The second list covers jurisdictions with preferential tax regimes, namely those with corporate tax rates significantly lower than the Greek statutory rate or that provide other substantially beneficial tax treatment. Both lists are published and updated annually by the Greek tax authorities in accordance with domestic law and EU coordination frameworks.

Under Article 23 of the Greek Income Tax Code (Law 4172/2013), all expenses paid to a tax resident in a non-cooperative jurisdiction or subject to a preferential tax regime are generally non-deductible. Deductibility may only be allowed if the taxpayer can demonstrate that such expenses relate to genuine and ordinary transactions and that they do not result in the transfer of profits, income, or capital with the purpose of tax avoidance or evasion. This limitation ensures that transactions with high-risk or low-tax jurisdictions cannot be used as a conduit for artificially reducing the Greek tax base.

However, this provision does not preclude the deduction of expenses paid to a resident in a European Union (EU) or European Economic Area (EEA) Member State, provided that there exists a legal framework for the exchange of tax information between Greece and that Member State. This distinction reflects Greece's alignment with EU transparency standards while safe-

guarding against cross-border tax abuse involving high-risk or preferential jurisdictions.

In addition to the domestic list, Greece, as an EU Member State, also applies the EU list of non–cooperative jurisdictions for tax purposes compiled by the Council of the European Union. This EU list identifies jurisdictions that fail to meet minimum standards on tax transparency, fair taxation and measures against base erosion and profit shifting (BEPS).

5.4 Reporting Obligations and Disclosure Regimes

Greece maintains a wide framework of mandatory reporting obligations for taxpayers and intermediaries, designed to enhance transparency, prevent tax abuse and detect both domestic and cross-border tax fraud. These obligations complement the criminal and civil penalties for tax evasion and the general anti-abuse rules provided under the Greek Income Tax Code (Law 4172/2013) and the Code of Tax Procedure (Law 5104/2024).

Tax Return Filing and Financial Reporting

Annual tax returns must be filed by all individuals and legal entities resident in Greece, reporting all income, profits, capital gains and deemed income.

Financial statements prepared under Greek Accounting Standards are submitted for corporate taxpayers and tax adjustments are disclosed to reconcile accounting profits with taxable income.

Cross-Border Reporting Obligations

Transfer pricing documentation

Greek taxpayers engaging in related-party transactions must maintain master files and local files demonstrating compliance with the arm's-length principle. These documents must be submitted to tax authorities upon request.

Country-by-country reporting (CbCR)

Large multinational enterprises with consolidated revenue exceeding EUR750 million must file CbCR reports with the Greek Tax Administration, providing detailed information on income, taxes paid and economic activity by jurisdiction.

Reporting of cross-border arrangements (DAC6/ EU Mandatory Disclosure Rules)

Intermediaries and taxpayers must disclose certain cross-border transactions that meet specified "hallmarks" indicative of potential tax avoidance. Greece implements the EU Directive 2018/822 (DAC6), requiring disclosure within 30 days of the arrangement being made available, ready for implementation or first executed.

Mandatory Reporting of Financial Accounts and Beneficial Ownership

Automatic exchange of financial account information

Greece participates in the Automatic Exchange of Financial Account Information (AEOI) under the Common Reporting Standard (CRS). Financial institutions report account balances, interest, dividends and other income earned by non-residents to the Greek authorities, who then exchange this information with other jurisdictions.

Beneficial ownership register

Greek legal entities must report beneficial ownership information to the national registry. This enables authorities to trace ultimate owners and detect potential schemes designed to obscure tax liabilities.

5.5 Role of Tax Authorities and Enforcement Measures

Greek tax authorities are empowered with comprehensive investigative tools, including access to records, audits (desk and field), unannounced inspections and, in serious cases, judicially authorised searches and raids. These powers are complemented by cross-border information exchange and mandatory reporting frameworks, thereby ensuring a robust system for detecting tax fraud, evasion and abusive arrangements.

Access to Accounting Records and Documentation

Tax authorities have the right to request and examine all accounting records, financial statements and supporting documentation of taxpayers. This includes invoices, contracts, bank statements and electronic records. Records must be provided in the format and

within the timeframe specified by the authorities or failure to do so may result in administrative penalties.

Authorities can also access electronic accounting systems, tax returns and VAT submissions to perform reconciliations and identify inconsistencies.

Audits and Tax Examinations

Desk audits and field audits are routinely conducted to verify compliance. Field audits may involve reviewing books and documents on the taxpayer's premises. Audits can examine domestic and cross-border transactions, with particular focus on related-party dealings, intra-group arrangements and transactions with non-cooperative or preferential jurisdictions.

Transfer pricing audits are specifically empowered to assess whether transactions comply with the arm's length principle and to apply adjustments where necessary.

Searches and Fiscal Perquisitions

In cases of suspected tax fraud or evasion, authorities may request judicial authorisation to conduct searches, fiscal perquisitions or raids at the taxpayer's premises.

Cross-Border Cooperation and Information Gathering

The Greek authorities may request information from foreign tax authorities under double taxation treaties, EU directives (DAC6, CRS) and OECD frameworks, enabling investigations into cross-border tax avoidance and evasion schemes. The authorities can also analyse data obtained through reporting obligations, such as CbCR, VAT returns or beneficial ownership registries, to detect inconsistencies and undeclared income.

Enforcement Measures Following Investigation

Upon detecting fraud, the tax administration can:

- adjust the taxpayer's taxable income;
- deny deductions or exemptions;
- impose administrative fines and interest; and
- refer cases for criminal prosecution where intentional fraud is identified, which can result in imprisonment or substantial fines.

6. Penalties and Sanctions

6.1 Tax Penalties

The Code of Fiscal Procedure (Law 5104/2024) establishes the general framework for administrative penalties, including fines for failure to submit or for inaccurate tax returns, non-compliance with withholding obligations on cross-border payments, late payment of taxes and breaches of bookkeeping and documentation requirements.

In the international tax context, penalties may arise in particular from:

- non-compliance with transfer pricing documentation and reporting obligations;
- incorrect application of withholding taxes on dividends, interest, or royalties paid abroad;
- failure to apply controlled foreign company (CFC) rules, hybrid mismatch rules, or the general anti-avoidance rule (GAAR);
- non-compliance with reporting obligations under the EU Directives on Administrative Cooperation (DAC), including mandatory disclosure rules (DAC6); and
- failure to provide information in the framework of exchange of information procedures.

The authority responsible for imposing and enforcing administrative tax penalties is the Independent Authority for Public Revenue (AADE), acting through its competent audit, assessment and collection services. AADE conducts tax audits, issues tax and penalty assessment acts and oversees enforcement and collection measures.

Taxpayers may challenge penalty assessments through an administrative appeal before the Dispute Resolution Directorate (within AADE) and subsequently before the competent administrative courts. Judicial review ultimately lies with the Council of State (Supreme Administrative Court) on matters of law.

6.2 Criminal Penalties

Legal provisions governing criminal tax evasion have been incorporated in the Greek Code of Fiscal Procedure, pursuant to which tax evasion is considered to be committed by persons who intentionally:

- avoid the payment of taxes (eg, income tax, uniform tax on the acquisition of ownership, special real estate tax, VAT, turnover tax, premium tax, withholding and imputable taxes, fees or contributions and shipping tax) by not paying or paying incorrectly or reimbursing or setting off or deducting or withholding taxes; and
- issue false or fictitious tax records, as well as receiving fictitious tax records or altering such records, irrespective of whether they evade paying taxes or not.

Under the Greek penal system, legal entities do not bear criminal liability. Accordingly, individuals who are engaged in the effective management, administration and representation of a legal entity (either by holding specific executive positions or by exercising de facto management duties) are considered perpetrators or accomplices in tax evasion.

To that end, criminal liability due to tax evasion is correlated with the exact time at which a potential tax infringement took place and therefore may affect numerous persons who held one of the aforementioned positions during the time period starting from the fiscal year in question and onwards, thereby bearing joint tax liability in accordance with Article 49 of the Greek Code of Fiscal Procedure.

6.3 Interaction Between Tax and Criminal Procedures

In the event of the commission or attempted commission of a tax offence under the Greek Code of Fiscal Procedure, a prompt criminal complaint must be filed by the Tax Administration or the Financial Police Directorate of the Hellenic Police Headquarters. Criminal prosecution is initiated ex officio.

The State may appear before the criminal courts in cases involving tax offences to support the prosecution. When the prosecution concerns a misdemeanour, the State may also be represented by the head of the competent Tax Authority or an official designated by the head.

In trials concerning tax offences, the physical appearance of the tax officers as witnesses at the hearing is not mandatory if a written statement has been submitted to the competent public prosecutor or the court by the authority that conducted the tax audit regarding the case. However, the court may, ex officio or upon the defendant's request, order a witness to appear to testify on matters essential to the outcome of the trial and that cannot be established solely from the case documents.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Greece has signed and ratified bilateral treaties for the avoidance of double taxation with:

- 58 countries in the areas of income and capital tax; and
- four countries in the area of inheritance tax.

Additionally, Greece formalised its commitment to combat base erosion and profit shifting by depositing its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures with the Organisation for Economic Co-operation and Development (OECD) on 30 March 2021.

As per Article 28 (1) of the Greek Constitution, international treaties, including those on double taxation, take precedence over domestic legislation, provided reciprocity is ensured. Consequently, in instances of conflict between domestic law and treaty law, the latter prevails. The interpretation of treaty provisions exclusively rests within the domain of Greek courts. Although not strictly bound by the OECD Commentary or the stance of Greek authorities, the Greek courts often draw heavily from these sources, which significantly influence their decisions.

Between Greece and the EU member states, Directive 2011/16/EU (incorporated into Law 4170/2013) on administrative cooperation in the field of direct taxation is applicable. This Directive has been amended by the following:

- Directive 2014/107/EU, effective from 1 January 2016, which introduced the automatic exchange of

financial accounts information (incorporated with Law 4378/2016);
- Directive 2015/2376/EU, effective from 1 January 2017, which introduced the automatic exchange of information on advance cross-border rulings and advance pricing arrangements (incorporated with Law 4474/2017);
- Directive 2016/881/EU, effective from 5 June 2017, which introduced the automatic exchange of information on the country-by-country report (incorporated with Law 4484/2017);
- Directive 2016/2258/EU, effective from 1 January 2018, which introduced the access of tax authorities to mechanisms, procedures, documents and information in order to combat money laundering from illegal activities (incorporated with Law 4569/2018);
- Directives 2018/822/EU & 2020/876/EU, which introduced the mandatory automatic exchange of information on reportable cross-border arrangements (incorporated with Law 4714/2020), as well as its Addendum (ratified with Law 5272/2026)
- Directive 2021/514/EU, which established the scope and the conditions of the mandatory automatic exchange of information reported by platform operators (incorporated with Law 5047/2023); and
- the Multilateral Competent Authority Agreement on Automatic Exchange of Information pursuant to the Crypto-Asset Reporting Framework (ratified with Law 5273/2026)..

Between Greece and other (non-EU) countries, administrative cooperation in the field of taxation is based on the following agreements:

- the European Convention on Mutual Administrative Assistance in Tax Matters of 25 January 1988 (as amended in 2010 – ratified with Law 4153/2013), the scope of which covers specific categories of direct and indirect taxes (the Convention provides for three kinds of information exchange, namely: upon request, spontaneous and automatic exchange of information);
- the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (ratified with Law 4428/2016), which provides for the exchange of information corresponding to that defined in the Directive 2014/107/EU, as well as its Addendum (ratified with Law 5272/2026); and
- the Multilateral Competent Authority Agreement on the Exchange of (Country-by-Country Reports (ratified with Law 4490/2017), which provides for the exchange of information corresponding to that defined in the Directive 2016/881/EU; and
- the Multilateral Competent Authority Agreement on Automatic Exchange of Information pursuant to the Crypto-Asset Reporting Framework (ratified with Law 5273/2026).

Between Greece and the US, administrative cooperation in the field of taxation is based on the following agreements:

- the Agreement to improve International Tax Compliance and to Implement Foreign Account Tax Compliance Act ((FATCA) – ratified with Law 4493/2017); and
- the Arrangement on the Exchange of Country-by-Country Reports (ratified with Law 4534/2018), which provides for the exchange of information corresponding to that defined in the Directive 2016/881/EU.

7.2 Exchange of Information Clauses in Tax Agreements

Greece participates in the international exchange of tax information under both domestic law and multilateral agreements. The country employs automatic, spontaneous and on-request exchange mechanisms, in line with OECD and EU standards.

Exchange on request is carried out upon a specific and reasoned request by a foreign competent authority concerning identifiable taxpayers and foreseeable relevance.

Spontaneous exchange takes place where the Greek tax authorities identify information that may be relevant to another jurisdiction, such as adjustments following a tax audit or the granting of cross-border rulings that fall within EU reporting obligations.

Automatic exchange of information is implemented extensively under EU law and international standards. Greece participates in automatic exchanges

concerning financial account information under the Common Reporting Standard (CRS), country-by-country reporting (CbCR), advance cross-border rulings (where applicable), DAC6 mandatory disclosure arrangements and other categories prescribed under the DAC framework.

7.3 Other Forms of International Tax Collaboration

As a member of the Organisation for Economic Co-operation and Development (OECD), Greece takes part in the International Compliance Assurance Programme (ICAP). ICAP is a voluntary, multilateral risk assessment programme designed for large multinational enterprises (MNEs). It enables tax administrations to collaborate on the early assessment of transfer pricing and other international tax risks, with the objective of providing greater tax certainty and reducing the likelihood of future disputes.

In addition, Greece participates in joint audits and simultaneous tax audits under both EU and international frameworks. Within the EU, these forms of cooperation are conducted pursuant to the Directives on Administrative Cooperation (DAC), as transposed into Greek law.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Greece maintains a Mutual Agreement Procedure (MAP) framework in accordance with its obligations under double taxation treaties and the European Convention on the Elimination of Double Taxation in connection with adjustments to the profits of associated enterprises (90/436/EEC). The MAP mechanism is designed to resolve cross-border tax disputes and prevent double taxation arising from transfer pricing adjustments, income allocations or other treaty-related matters.

The legal basis for MAP is primarily found in Article 73 of Law 5104/2024 (Greek Code of Fiscal Procedure), which provides detailed rules for the conduct and finality of the procedure. Under these provisions, taxpayers who believe that actions by the Greek tax administration result in taxation not in accordance with an applicable treaty may request MAP assistance from the competent authority within the Greek Independent Authority for Public Revenue. The MAP is conducted by the Greek Tax Administration and its outcome is formalised through the issuance of a Mutual Agreement Decision.

8.2 Application Deadlines

A request for a Mutual Agreement Procedure (MAP) is considered admissible if it is submitted to the Competent Authority within the two- or three-year period provided under the applicable double taxation treaty (DTT), starting from the date of notification of the tax assessment or adjustment, the imposition of which is not in accordance with the provisions of the applicable DTT.

In cases where the applicable DTT does not specify a time limit, the request for MAP may be submitted at any time and will be considered admissible.

For the orderly conduct and effective administration of the procedure, however, it is recommended that the request be submitted as soon as possible and in any event within five years of the relevant action. Requests submitted beyond this five-year period are accepted by the Competent Authority, which will exhaust all available means to review the substance of the case; however, resolving the matter in such instances may be difficult or even impossible.

8.3 Mandatory Binding Arbitration

Greece provides for mandatory binding arbitration, but only as a treaty-based mechanism and not as a general feature of domestic tax dispute resolution.

Mandatory arbitration may be invoked after the completion of the Mutual Agreement Procedure (MAP) if the competent authorities of the jurisdictions involved are unable to resolve the dispute within the timelines set out in the relevant treaty. In such cases, an arbitration panel issues a final and binding decision, which must be implemented by the competent authorities.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Greece has established an Advance Pricing Agreement (APA) procedure to provide businesses with certainty regarding transfer pricing and to prevent disputes and potential double taxation arising from cross-border transactions between related parties.

For unilateral APAs, the process involves the taxpayer and the Greek Tax Administration. In contrast, bilateral or multilateral APAs involve consultation among the competent authorities of the relevant States; the taxpayer participates only indirectly and may accept or decline the APA.

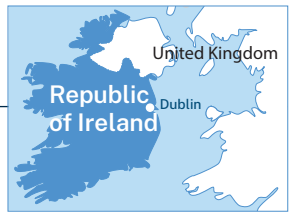
While unilateral APAs may provide transfer pricing certainty within Greece, they do not prevent potential double taxation and are therefore generally less preferred. Nevertheless, in cases where no double taxation treaty exists with another jurisdiction, the Greek tax authorities may issue a unilateral APA upon request, provided it is appropriate and in the legitimate interest of the taxpayer. Importantly, a unilateral APA concluded by a taxpayer with another jurisdiction without the involvement of the Greek tax authorities is not binding on Greece.

9.2 Other Mechanisms

Unlike many other OECD jurisdictions, Greece does not currently provide advance rulings on general tax matters. Tax certainty is therefore largely achieved through APAs and MAP procedures.

However, this may soon change, as a draft tax bill has recently been submitted to public consultation introducing "Tax Binding Rulings" into the Greek Code of Tax Procedure. Under the proposed framework, taxpayers would be able to request, prior to carrying out a specific transaction or business arrangement, a binding interpretation from the Independent Authority for Public Revenue on the application of Greek tax and customs legislation. The ruling would be binding on the tax administration, provided that the relevant facts and legal framework remain unchanged. The draft rules also envisage publication of rulings in anonymised form, potentially contributing to greater transparency and consistency in administrative practice.

IRELAND



Law and Practice

Contributed by:
Amelia O'Beirne and Trevor Glavey
A&L Goodbody

Contents

1. Sources and Principles p.189
1.1 Domestic Sources of International Tax Law p.189
1.2 Hierarchy of Sources p.189
1.3 OECD Model/United Nations Influence on Treaty Practice p.189
1.4 Multilateral Instrument p.190

2. Territoriality, Residence and Permanent Establishment p.190
2.1 General Principle of Territorial Taxation p.190
2.2 Tax Residence of Individuals p.190
2.3 Taxation of Resident Individuals p.190
2.4 Taxation of Non-Resident Individuals p.191
2.5 Tax Residence of Legal Entities p.191
2.6 Definition of Permanent Establishment p.192

3. Taxation of Cross-Border Income p.192
3.1 Income From Immovable Property p.192
3.2 Business Profits p.192
3.3 Passive Income p.193
3.4 Capital Gains p.194
3.5 Employment Income p.195
3.6 Other Income p.195

4. OECD/G20 Global Tax Reform p.195
4.1 Pillar One – Amount B p.195
4.2 Pillar One – Amount A p.196
4.3 Pillar Two p.196
4.4 Specific Features or Deviations of Pillar Two p.197
4.5 Digital Services Tax p.197

5. Anti-Avoidance and Anti-Evasion Measures p.197
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.197
5.2 Anti-Avoidance Mechanisms p.198
5.3 Blacklists and Non-Cooperative Jurisdictions p.198
5.4 Reporting Obligations and Disclosure Regimes p.199
5.5 Role of Tax Authorities and Enforcement Measures p.199

6. Penalties and Sanctions p.200
6.1 Tax Penalties p.200
6.2 Criminal Penalties p.201
6.3 Interaction Between Tax and Criminal Procedures p.201

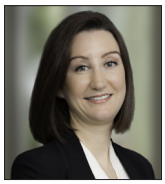
7. Administrative Co-Operation p.201
7.1 Legal Framework for Administrative Co-Operation p.201
7.2 Exchange of Information Clauses in Tax Agreements p.201
7.3 Other Forms of International Tax Collaboration p.202

8. Mutual Agreement Procedures and Arbitration p.203
8.1 Availability and Legal Basis p.203
8.2 Application Deadlines p.203
8.3 Mandatory Binding Arbitration p.203

9. Dispute Prevention p.204
9.1 Advance Pricing Agreements p.204
9.2 Other Mechanisms p.204

A&L Goodbody is one of Ireland's leading corporate law firms. Comprising A&L Goodbody LLP and related partnerships, the firm has 126 partners and 1,000 staff. Headquartered in Dublin, with offices in Belfast, London, New York and San Francisco, the firm has specialist teams across all practice areas of Irish corporate law. For over 100 years, A&L Goodbody has been at the centre of corporate Ireland, advising some of the largest and most influential corporates, both domestic and international. With a large operation in Belfast, the team provides full-service legal advice across the island of Ireland, working on significant cross-border mandates. With considerable international experience, the firm works closely with international law firms and other professional services advisers.

Authors



Amelia O'Beirne is a partner in A&L Goodbody's tax department. She has extensive experience in advising domestic and international clients on transactional matters, including public and private company M&A, debt and equity capital markets transactions and complex cross-border financing transactions, and on contentious matters such as tax authority enquiries and international tax disputes. Amelia regularly assists clients with resolving transfer pricing and other tax treaty-related issues through competent authority processes and the negotiation of advance pricing agreements. She has extensive experience in advising US multinationals on cross-border tax matters, having spent three years in the firm's New York office. Amelia represents a broad spectrum of clients in various industry sectors, including life sciences, technology, financial services and aircraft leasing.



Trevor Glavey is a partner in A&L Goodbody's tax department, and is both an Irish qualified lawyer and a chartered tax adviser. With over a decade of experience in advising companies in all industries with respect to all aspects of Irish corporate and international tax, Trevor specialises in international taxation, tax controversy and transfer pricing. In these areas, he advises multinational companies doing business in and from Ireland on their most complex and high-profile tax affairs.

A&L Goodbody

25 North Wall Quay
Dublin 1
D01 H104
Ireland

Tel: +353 1 649 2000
Web: www.algoodbody.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The Irish system of taxation is principally governed by a combination of domestic Irish legislation and European Union (EU) law. Legislation governing taxes in Ireland includes:

- the Taxes Consolidation Act 1997 (TCA);
- the Stamp Duties Consolidation Act 1999;
- the Capital Acquisitions Taxes Consolidation Act 2003; and
- the Value-Added Tax Consolidation Act 2010.

As a member state of the EU, Ireland is subject to EU law, both primary and secondary, including EU treaties, regulations and directives, together with decisions, recommendations and opinions issued by EU institutions. This includes, for instance, judgments of the Court of Justice of the European Union (CJEU).

In terms of the scope and structure of Ireland's tax treaty network, Ireland has currently signed comprehensive double taxation agreements (DTAs) with 78 countries, of which 75 are in effect. Ireland's DTAs cover direct taxes, which in the case of Ireland are:

- income tax;
- universal social charge;
- corporation tax; and
- capital gains tax.

Ireland's membership of the Organisation for Economic Co-operation and Development (OECD) and its commitment to participate in the implementation of OECD tax initiatives also shapes the development of Ireland's tax laws.

In terms of other sources, Ireland's tax authority, the Revenue Commissioners ("Revenue"), publishes extensive guidance on the interpretation and application of Ireland's tax laws. Such guidance is, however, not binding on taxpayers or the Irish courts.

1.2 Hierarchy of Sources

Subject to the following, the Irish Constitution takes precedence over other, inferior sources of law in Ireland. Accordingly, a common law rule or piece of legislation that conflicts with a provision of the Constitution can be invalidated on the basis that it is repugnant to the terms of the Constitution.

Ireland's accession to the EU necessitated an amendment to the Constitution to ensure that EU law enjoys supremacy in Ireland. Accordingly, in areas where the EU has competence, EU law prevails over a conflicting domestic provision. The terms of a ratified DTA concluded between Ireland and a DTA partner jurisdiction can also override domestic provisions.

As a common law jurisdiction, decisions of an Irish court (other than decisions of the Tax Appeals Commission (TAC)) have precedential value in Ireland and are binding on taxpayers unless overruled by a decision of a superior court (or a subsequent legislative amendment). As noted in **1.1 Domestic Sources of International Tax Law**, the same applies with respect to decisions of the CJEU. Decisions of foreign courts are only of persuasive authority in Ireland.

1.3 OECD Model/United Nations Influence on Treaty Practice

As a small open economy, Ireland benefits from globalisation and DTAs are important in facilitating engagement with key economic partners. Ireland's long-standing tax treaty policy has been to expand, maintain and enhance Ireland's tax treaty network in order to remove barriers and facilitate trade and investment opportunities between Ireland and partner countries. In pursuance of this policy, and as noted in **1.1 Domestic Sources of International Tax Law**, Ireland currently has comprehensive DTAs in place with 78 countries, of which 75 are in effect.

When negotiating DTAs, Ireland generally seeks to align as closely as possible with the OECD Model Tax Convention (MTC). In this respect, in June 2022 Ireland published a Tax Treaty Policy Statement which makes clear that one of Ireland's objectives for DTAs is to incorporate OECD minimum standards and best practices, aligned with the positions adopted by Ireland in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), into new and existing DTAs.

1.4 Multilateral Instrument

Ireland signed the MLI in June 2017 and deposited its instrument of ratification with the OECD on 29 January 2019.

The MLI entered into force for Ireland on 1 May 2019 and took effect for Ireland's DTAs as follows:

- with respect to taxes withheld at source, from 1 January 2020; and
- with respect to all other taxes levied by Ireland, for taxes levied with respect to taxable periods beginning on or after 1 November 2019.

The date on which the MLI modifies one of Ireland's DTAs depends on when the relevant treaty partner deposited its own instrument of ratification.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Subject to the rules outlined in greater detail in the succeeding sections, the general principle in Ireland is that an Irish tax-resident person is assessable to tax, whether it be income tax or corporation tax, on income derived from both domestic and foreign sources. By contrast, the Tax Acts generally only seek to assess a non-resident person on income from sources within Ireland.

As Ireland has an extensive DTA network, double taxation is generally avoided where both Ireland and its DTA partner seek to tax the same income.

2.2 Tax Residence of Individuals

An individual is resident in Ireland for tax purposes for a tax year if the individual is present in Ireland for:

- at least 183 days in total in that tax year; or
- at least 280 days in total between that tax year and the previous tax year (the "look-back rule").

If an individual is present in Ireland for not more than 30 days in a tax year:

- that individual will not be regarded as resident for that tax year; and
- those days in Ireland are ignored for the purposes of the look-back rule.

For individuals, the concepts of ordinary residence and domicile are also of relevance when determining an individual's liability to Irish tax.

If an individual has been tax-resident in Ireland for three consecutive tax years, the individual is considered ordinarily resident from the beginning of the fourth year, regardless of what their residence position is for that fourth year. An individual ceases to be ordinarily resident in Ireland if they are non-resident for three consecutive tax years.

Domicile is a common law construct. Under common law, every person must have a domicile. A person can only have one domicile at any particular time and cannot be without a domicile. There are three types of domicile, namely:

- domicile of origin;
- domicile of choice; and
- domicile of dependence.

2.3 Taxation of Resident Individuals

An individual who is resident and domiciled in Ireland for a year of assessment is chargeable to Irish income tax on their worldwide income.

An individual who is non-resident but who is ordinarily resident in Ireland is liable to tax on their worldwide income, with the exception of the following:

- income from a trade or profession no part of which is carried out in Ireland;
- income from an office or employment where all of the duties except incidental duties are exercised outside Ireland; and
- other foreign income that does not exceed EUR3,810 in total.

An individual who is not domiciled in Ireland but who is resident and/or ordinarily resident in Ireland is taxable on what is known as the "remittance basis" of taxation. Where an individual is taxable under the remit-

tance basis, the individual's non-Irish source income and gains are taxable only to the extent that they are remitted to Ireland. Where the individual has employment income from a non-Irish employment and performs duties related to that employment in Ireland, the remittance basis of taxation will not apply to such employment income.

For 2026, the standard rate of income tax is 20% and the marginal rate is 40%. In terms of the thresholds at which the marginal rate applies, currently for a single person the first EUR44,000 of the individual's income is taxed at 20%, with the balance taxed at 40%. For a married couple with one spouse with income, the first EUR53,000 is taxed at 20%, with the balance taxed at 40%. Various credits, allowances and reliefs are available to reduce an individual's income tax liability (eg, a personal tax credit of EUR2,000 applies for the tax year 2026).

Separate to income tax, a universal social charge (USC) also applies in Ireland. If a person's total income exceeds EUR13,000, subject to certain exceptions, USC applies to the individual's full income. For 2026 the USC rates are as follows:

- first EUR12,012 of income is taxed at 0.5%;
- next EUR16,688 of income is taxed at 2%;
- next EUR41,344 of income is taxed at 3%; and
- balance of income is taxed at 8%.

Ireland also operates a system of pay-related social insurance (PRSI). PRSI is a mandatory social insurance contribution paid by employers, employees and self-employed individuals at varying rates, subject to certain exemptions. There are 11 different PRSI contribution classes which determine an individual's liability to PRSI. See **3.5 Employment Income** for the rates of employer and employee PRSI.

2.4 Taxation of Non-Resident Individuals

Individuals who are not resident or ordinarily resident in Ireland are subject to Irish income tax on their:

- Irish source income; and
- income from an Irish public office and from a trade, profession or employment to the extent that such trade, profession or employment is exercised, or duties in respect of it are carried out, in Ireland.

Subject to certain exceptions, USC also arises for non-resident individuals with relevant emoluments and/or relevant income within the charge to Irish income tax. USC is generally not payable in respect of, for example, employment income of a non-resident individual that is attributable to duties exercised wholly outside Ireland, where there is no charge to income tax in Ireland.

With respect to PRSI, the general rule is that an employee pays PRSI in the country where they carry out the duties of their employment, regardless of where the employer is located. Where an employee's duties of employment are carried out both in Ireland and abroad, only that portion of the employee's remuneration that relates to duties carried out in Ireland is liable to PRSI in Ireland. An employee may also be liable to pay PRSI on their income in another jurisdiction. For this reason, Ireland has entered into a number of social security agreements with other jurisdictions to ensure that, in these circumstances, PRSI is only paid in one country.

2.5 Tax Residence of Legal Entities

A company incorporated in Ireland is generally regarded as tax-resident in Ireland (referred to as the Incorporation Test). The Incorporation Test is dis-applied where an Irish incorporated company is, under the terms of one of Ireland's DTAs, regarded as tax-resident in the DTA partner jurisdiction and not tax-resident in Ireland.

Where a company is dual resident in both Ireland and a DTA partner jurisdiction, it is necessary to have regard to the tie-breaker test in the relevant DTA. When it comes to the applicable tie-breaker test, the specific tax treaty should always be consulted. Depending on the DTA, residence may be determined by reference to the place of effective management of the relevant company or by mutual agreement between the competent authorities of Ireland and the DTA partner.

A foreign incorporated company can establish Irish tax residence by having its central management and control (CMC) exercised in Ireland. In this respect,

Revenue's guidance indicates that it will consider the highest level of control in a company when considering where its CMC is located, and analyse where:

- company policy is decided;
- investment decisions are made;
- major contracts are defined;
- the company's head office is located;
- the majority of directors live; and
- meetings of the board of directors are held.

2.6 Definition of Permanent Establishment

A non-resident company is only subject to Irish corporation tax if it carries on a trade in Ireland through a "branch or agency". A "branch or agency" is not meaningfully defined in Ireland's tax legislation and is simply described as meaning "any factorship, agency, receivership, branch or management".

Revenue has, however, published guidance on the interpretation of the term, wherein it accepts that it is synonymous with a permanent establishment (PE) within the meaning of Ireland's DTAs. In this respect, Ireland's DTAs generally follow Article 5 of the MTC and the definition of a permanent establishment contained therein. As deviations from Article 5 of the MTC can arise, the relevant DTA must be consulted in each case. An example of a deviation arises under the Ireland-UK DTA where a building site or construction or installation project lasting for more than six months will constitute a PE (the threshold under Article 5 MTC is 12 months).

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

See **2. Territoriality, Residence and Permanent Establishment** for the rules that apply to the taxation of income from Irish immovable property held by resident and non-resident individuals.

Where immovable property is held through a corporate entity (either Irish tax-resident or non-Irish tax-resident), rental income receivable from letting the property is chargeable to Irish corporation tax at 25%.

In calculating the taxable income derived from immovable property, deductions are allowable for certain expenses: these include, for example, the costs of maintenance, repairs and management/administration. Certain reliefs and exemptions are also available to reduce the amount of tax payable on income from immovable property, including, subject to certain conditions, in relation to interest on borrowed money employed in the purchase, improvement or repair of a property.

Ireland has a special regime relating to payments to non-resident landlords. The regime requires either:

- that such landlord appoint an Irish resident collection agent to collect and be assessed for Irish tax in the name of the non-resident landlord in relation to rental income and to file Irish tax returns on their behalf; or
- where an Irish resident collection agent is not acting in this capacity, that the non-resident landlord allow their tenant, where paying directly, or their collection agent (following receipt of rent from a tenant), to withhold 20% of the rent due and to submit it to Revenue – the non-resident landlord can then claim a credit for the tax withheld and remitted to Revenue by the tenant when filing its tax return.

3.2 Business Profits

Corporation tax is charged at 12.5% on profits of a trade carried on at least partly in Ireland, subject to certain exceptions, while non-trading income (eg, investment income) is taxed at 25%.

There is no statutory definition in Irish tax law as to what constitutes a "trade", although the UK courts have set down a number of general principles which are broadly followed. The primary characteristics of a trade are operational substance, profit motive, the taking of risk to generate a profit, dealing with a number of (ideally third-party) customers, etc. The concept of "trading" presupposes a certain level of activity by the company – it must be actively engaging in its business and deriving profits from its business, rather than simply passively receiving investment income. However, the "trading" analysis is not industry- or function-specific – any revenue-generating activities

can potentially qualify as "trading" activities benefiting from the 12.5% rate.

When calculating the taxable profits of a trade, expenditure incurred wholly and exclusively for the purposes of the trade and which is not capital in nature is allowable as a deduction against the trading income.

As a small open economy, Ireland has introduced tax legislation intended to make Ireland an attractive location for foreign direct investment. In this respect, a number of notable incentives and reliefs are available for companies doing business in Ireland that can reduce the overall amount of corporation tax payable on their business profits, including:

- a regime that provides tax relief on the acquisition cost of intellectual property (IP) and other intangibles;
- an OECD-compliant R&D tax credit regime;
- an OECD-compliant patent box regime;
- extensive domestic exemptions from withholding tax on interest and dividend payments;
- no withholding tax on royalties paid to EU member states/DTA countries;
- no thin capitalisation rules; and
- no capital duty.

3.3 Passive Income

For individuals, the Irish income tax treatment of dividends, interest and royalties follows the general rules outlined in **2. Territoriality, Residence and Permanent Establishment**.

Taxation of Dividends

A distribution received by an Irish tax-resident company from another Irish tax-resident company is not chargeable to income tax or corporation tax, and forms part of the franked investment income of the recipient company.

Foreign dividends received by an Irish tax-resident company may either be:

- exempt from Irish corporation tax if the conditions of the participation exemption are met;
- taxed at the 12.5% rate of corporation tax (as described in more detail below); or
- taxed at the 25% rate of corporation tax.

Subject to the following, for companies resident in Ireland, passive receipts of foreign dividends, interest and royalites are generally subject to corporation tax at a rate of 25%. With respect to dividends received by a resident company from companies resident for tax purposes in an EU member state, a country with which Ireland has concluded a DTA, a non-EU non-DTA partner country that has ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters or a non-DTA country where the paying company is a member of a publicly listed group, such dividends are liable to tax at the 12.5% rate of corporation tax where:

- 75% or more of the dividend-paying company's profits are "trading" profits (other than profits from what is known as an "excepted trade"), being either trading profits of that company or dividends received by it out of trading profits of lower-tier companies resident in the EU, a country with which Ireland has a DTA, a non-EU non-DTA partner country that has ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters or a non-DTA country where the paying company is a member of a publicly listed group; and
- the aggregate value of all assets used by the receiving company and each company of which it is a parent for their trades is not less than 75% of the aggregate value of all their assets.

An election must be made in the company's annual corporation tax return to avail itself of this treatment.

Where a company does not own (directly or indirectly) more than 5% of the share capital of the foreign dividend-paying company, any such dividends received, which form part of the trading income of that company taxable at 12.5%, are not subject to tax.

Under the Finance Act 2024, Ireland introduced a participation exemption in respect of foreign dividends. The Finance Act 2025 subsequently expanded its geographical scope and introduced certain other technical amendments such that it now applies to divi-

dends received from a company which is tax-resident in an EU or EEA member state, in a country with which Ireland has concluded a DTA or in a jurisdiction that generally imposes a non-refundable withholding tax on distributions, where:

- the paying entity is not generally exempt from foreign tax;
- the paying entity is not resident in a jurisdiction that is included on the EU list of non-cooperative jurisdictions; and
- the above conditions have been satisfied throughout the preceding three years, reduced from five years with effect from 1 January 2026, in respect of the paying entity.

A number of other technical requirements must be satisfied for the participation exemption to apply. The participation exemption for foreign dividends is an optional regime and therefore only applies to taxpayers who elect for it – otherwise, the existing tax and credit rules (noted above and below) continue to apply.

Where foreign dividends, interest and royalties received by an individual or company are taxed in Ireland, credit may be available for foreign withholding taxes suffered under the terms of a DTA or domestic law. With respect to foreign dividends received by an Irish company, credit may also be available for underlying taxes suffered on the profits out of which the dividend was paid, subject to certain conditions.

Taxation of Interest and Royalties

Interest and royalties received by an Irish tax-resident company may be taxed at the 12.5% rate of corporation tax (where received as trading income) or the 25% rate of corporation tax (where received as non-trading or passive income).

Withholding Taxes

As a general rule, dividends and other distributions paid by an Irish tax-resident company are subject to dividend withholding tax (DWT) at a rate of 25%, subject to a broad range of exemptions. Payments of interest, patent royalties and other annual payments attract withholding tax at a rate of 20%. However, there are broad domestic law exemptions that can be availed of to relieve the paying company from the obligation to withhold. For example, no DWT arises on dividends paid to a non-Irish tax-resident company:

- that is resident in an EU member state or a country with which Ireland has a DTA, provided that company is not controlled by any person or persons resident in Ireland; or
- that is ultimately controlled by a person or persons resident in an EU member state or a country with which Ireland has a DTA.

Similarly, patent royalties are eligible for a domestic law withholding tax exemption where the payments are made by a company in the course of a trade or business to a company that is tax-resident in an EU member state (other than Ireland) or in a DTA country that generally imposes a tax on royalty payments receivable from outside that territory. The payments must be made for bona fide commercial reasons, and the exemption does not apply where the royalties are paid in connection with a trade carried out in Ireland through a branch or agency by the receiving company.

See **5.3 Blacklists and Non-Cooperative Jurisdictions** for how Ireland's outbound payments defensive measures regime interacts with Ireland's withholding tax exemptions.

3.4 Capital Gains

Currently, the chargeable gains of an individual are subject to Irish capital gains tax (CGT) at the rate of 33%. Companies pay corporation tax on their chargeable gains at an effective rate of 33%. Broadly, Irish CGT applies to the difference between the sale proceeds and acquisition costs of a capital asset. Certain allowable expenses can also be deducted from the sale proceeds in calculating the chargeable gain subject to Irish CGT.

Irish tax-resident persons pay CGT on gains arising on the disposal of all capital assets, regardless of where those assets are located. In the case of foreign situated property, the terms of a DTA can apply to eliminate double taxation where it arises.

Non-resident persons are subject to Irish CGT on gains arising from the disposal of specified Irish assets. Such assets include:

- land and buildings in Ireland;
- minerals in Ireland (or any rights, interests or assets relating to such minerals);
- assets used or held for the purposes of a trade carried on in Ireland;
- shares deriving the greater part of their value from land, buildings or minerals in Ireland;
- exploration and exploitation rights of Ireland's seabed and subsoil; and
- shares deriving the greater part of their value from exploration and exploitation rights of Ireland's seabed and subsoil.

For companies, there are various reliefs from CGT on the transfer of assets intra-group and in the context of company reconstructions and mergers. Various reliefs from CGT are also available for individuals, including for entrepreneurs disposing of certain business assets. Individuals are also entitled to an annual exemption from CGT on the first EUR1,270 of gains arising in a tax year.

3.5 Employment Income

Employment income is subject to deduction at source by the employer of employee taxes – ie, income tax, USC and PRSI under the Pay As You Earn (PAYE) system. See **2.3 Taxation of Resident Individuals** for the rates of income tax and USC applicable for 2026. Currently, employer PRSI applies at the rate of up to 11.25%, and employee PRSI applies at a rate of up to 4.2% (from 1 October 2026, the rate of PRSI (employer and employee) will increase by 0.15%).

As a small open economy, Ireland recognises the need for incentives to attract talent to support investment. In line with this policy, Ireland operates a number of regimes designed to support short-term assignees to Ireland and cross-border employment. One such relief is the Special Assignee Relief Programme (SARP). An employee assigned to work in Ireland by their existing employer may be entitled, subject to certain conditions being satisfied, to claim a deduction from their employment income tax liability under SARP. For employees who arrive in Ireland after 1 January 2026, the proportion that can be deducted is 30% of income over EUR125,000, up to a limit of EUR1 million.

The rise of remote working poses particular challenges for employees, tax administrations and employers. From an Irish tax perspective, Ireland does not have standalone rules relating to remote working. As such, it is important to note that, where an individual performs employment duties in Ireland for a foreign employer, this can give rise payroll withholding obligations and, depending on the circumstances, permanent establishment risk (subject to the terms of Ireland's DTAs). It is advisable for employers to put in place policies and procedures governing remote working to help mitigate these risks.

3.6 Other Income

Ireland's tax legislation ensures that income which does not fall into any of the specific categories addressed previously is still brought within the charge to tax. In practice, such income is taxed as passive or non-trading income. This ensures that income not otherwise covered by specific trading, passive or category-based rules does not fall outside the Irish tax net.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Ireland has taken steps to implement Amount B, albeit adding its own domestic conditions, restrictions and compliance requirements on top of the OECD framework. Specifically, the Finance Act 2024 introduced Amount B rules in Ireland for chargeable periods commencing on or after 1 January 2025.

Ireland only applies Amount B where the counterparty is in an OECD "covered jurisdiction". A covered jurisdiction for these purposes is a jurisdiction included in the list of covered jurisdictions for the Inclusive Framework political commitment on Amount B, published by the OECD on 17 June 2024. Broadly, Ireland will respect the Amount B outcome determined in accordance with the OECD Pillar One Amount B guidance where such an approach is applied by a covered jurisdiction with which Ireland has a DTA and the profits of the distributor, sales agent or commis-

sionaire (as the case may be) are charged to tax in that covered jurisdiction.

An arrangement qualifying under Ireland's implementing legislation in respect of Amount B is an arrangement that is:

- a buy-sell marketing and distribution arrangement where the distributor under the arrangement purchases goods from one or more than one associated company for wholesale distribution to independent parties; or
- a sales agency or commissionaire arrangement where the sales agent or commissionaire under the arrangement contributes to one or more than one associated company's wholesale distribution of goods to independent parties and where those goods are sold by the associated company without either it, or the sales agent or commissionaire, engaging other associated parties as intermediaries between it and the independent party customers.

For the arrangement to qualify, the legislation provides that the arrangement must also exhibit economically relevant characteristics that mean it can be reliably priced using a one-sided transfer pricing method where the distributor, sales agent or commissionaire (as the case may be) is the tested party.

An arrangement will not constitute a qualifying arrangement under Ireland's implementing legislation where:

- the arrangement involves the distribution of non-tangible goods, services or the marketing, trading or distribution of commodities;
- the tested party carries out non-distribution activities and the arrangement cannot be adequately evaluated and reliably priced separate from those activities; or
- the tested party has incurred annual operating expenses which are lower than 3% or greater than 30% of its annual net revenues.

As noted previously, Ireland's implementing legislation also requires specific compliance requirements to be satisfied. These include, for example, including Amount B-specific information in the transfer pricing local file and notifying Revenue that the taxpayer is applying Amount B.

Amount B will not apply unless the qualifying arrangement is entered into for bona fide commercial reasons and not as part of an arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax.

4.2 Pillar One – Amount A

In October 2021, the Irish Department of Finance indicated its support for the two-pillar solution to address the tax challenges arising from the digitalisation of the economy (including Amount A). At the time, the Irish government noted that, while Pillar One represented a net cost to Ireland in the form of reduced corporation tax receipts, overall Pillar One should help bring about stability and certainty in the international tax framework, which in turn should help drive economic growth from which all (including Ireland) can benefit.

As part of its commitment to the two-pillar solution, the Irish government has indicated its willingness to sign the Multilateral Convention to Implement Amount A of Pillar One if it opens for signature. Given recent pronouncements from the US Treasury in respect of Amount A, it remains to be seen whether Amount A will proceed in its current form.

4.3 Pillar Two

In 2021, the OECD published draft Global Anti-Base Erosion Rules aimed at ensuring that multinational enterprises will be subject to a global minimum 15% tax rate. On 15 December 2022, the Council of the European Union formally adopted the Minimum Taxation Directive (2022/2523) (the "Pillar Two Directive"), which establishes a minimum effective tax rate of 15% for large corporate groups in the EU, and essentially requires the implementation within the EU of the OECD's Pillar Two proposal. EU member states were required to implement the Pillar Two Directive by 31 December 2023.

Ireland implemented the Pillar Two Directive and the OECD's proposals into Irish law pursuant to the Finance Act (No 2) 2023, with the effect that the 15% minimum effective corporation tax rate applies to large

corporate groups with a turnover of EUR750 million or more for accounting periods commencing on or after 31 December 2023. Ireland introduced the income inclusion rule (IIR) and qualified domestic minimum top up tax (QDMTT) with effect for accounting periods commencing on or after 31 December 2023, while, subject to limited exceptions, the undertaxed profits rule (UTPR) entered into effect for accounting periods commencing on or after 31 December 2024.

Ireland continues to apply the 12.5% corporation tax rate to companies outside the scope of Pillar Two.

4.4 Specific Features or Deviations of Pillar Two

The Irish implementing legislation moved a little beyond the OECD framework rule by expanding the scope of the QDMTT to apply to standalone entities (ie, non-consolidating entities which breach the EUR750 million threshold in their own right), but excluding standalone investment undertakings.

In January 2026, the "Side-by-Side" package of administrative guidance was released by the OECD. This package recognises that the US domestic tax regime can operate side-by-side with the Pillar Two rules. As such, where a multinational group has a US parent, the group may be excluded from the application of the IIR and the UTPR under Pillar Two, subject to electing into a safe harbour and satisfying certain conditions. The QDMTT is unaffected by the new safe harbours and will continue to apply. Irish tax legislation will need to be amended to give effect to the Side-by-Side package, and it is expected that implementing legislation will be published in late 2026, but with retrospective effect for accounting periods commencing on or after 1 January 2026.

4.5 Digital Services Tax

Ireland has not implemented a digital services tax or any similar tax. Ireland also does not have concepts that would expand the ambit of source taxation to digital businesses specifically.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

When it comes to fraud and evasion, for the purposes of revenue offences under Ireland's tax legislation, "fraudulent evasion of tax" is defined in Section 1078 TCA to mean:

- evading or attempting to evade any payment or deduction of tax required to be paid by the person or, as the case may be, required to be deducted from amounts due to the person; or
- claiming or obtaining, or attempting to claim or obtain, relief or exemption from, or payment or repayment of, any tax to which the person is not entitled.

The above must be accompanied by conduct that deceives, omits or conceals, or the use of any other dishonest means, including providing false or misleading information or failing to furnish information to Revenue. In this context, Revenue lists in its Code of Practice for Revenue Compliance Interventions (the "Code") the following as the types of activity most likely to lead to prosecution:

- deliberate omission from tax returns;
- false claims for repayments;
- use of forged or false documents; and
- failure to remit fiduciary taxes.

With respect to avoidance, as outlined in more detail in **5.2 Anti-Avoidance Mechanisms**, Ireland's tax legislation contains a general anti-avoidance rule (GAAR) (Section 811C TCA) whereunder a "tax avoidance transaction" is defined, in broad terms, as a transaction in respect of which it would be reasonable to consider that the transaction gives rise to a tax advantage and the transaction was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage. A "tax advantage" for these purposes essentially means a reduction, avoidance or deferral of any charge or assessment to tax or a refund of or a payment of an amount of tax, or an increase

in an amount of tax, refundable or otherwise payable to a person.

In considering whether a transaction constitutes a "tax avoidance transaction", Revenue will consider a variety of factors, including the following:

- the form and substance of the transaction;
- the substance of any transaction(s) that may reasonably be regarded as being directly or indirectly related or connected with the transaction in question; and
- the final outcome of the transaction and any combination of those other transactions which are so related or connected.

Revenue will also have regard to the results of the transaction, its use as a means of achieving those results and any other means by which the results or any part of those results could have been achieved.

5.2 Anti-Avoidance Mechanisms

Irish tax law contains a number of anti-tax avoidance provisions. Generally, these provisions require that a relief can be relied upon only where the transaction is undertaken for bona fide commercial purposes and is not carried out primarily for tax avoidance purposes.

Section 811C TCA sets out the Irish GAAR provision for transactions entered into after 23 October 2014 (see **5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes** for what constitutes a "tax avoidance transaction" and the meaning of "tax advantage" for the purposes of Section 811C TCA). Under the GAAR, Revenue can reverse an assessment on the basis that it would be reasonable to consider that the transaction gives rise to a tax advantage and that obtaining the tax advantage was the purpose of the transaction.

Ireland's GAAR does not apply where a transaction (or series of transactions) is:

- undertaken with a view, directly or indirectly, to the realisation of profits in the course of a business activity of a business carried on by a person, and is not undertaken or arranged primarily to give rise to a tax advantage; or
- undertaken or arranged for the purpose of obtaining the benefit of any relief, allowance or other abatement, and would not result directly or indirectly in a misuse or abuse of the relevant provision having regard to the purposes for which it was provided.

Separately, Schedule 33 TCA contains a list of specific targeted anti-tax avoidance rules that are contained throughout Ireland's tax legislation. This list includes, for example, anti-avoidance rules in respect of bond washing, the misuse of losses and the transfer of rights to receive interest from securities.

As a member state of the EU, Ireland has also implemented the provisions of the Anti-Tax Avoidance Directive (ATAD). In line with its commitments under ATAD, in recent years Ireland has introduced:

- controlled foreign company rules;
- hybrid and reverse hybrid mismatch rules;
- an ATAD-compliant exit tax; and
- interest limitation rules (ILRs).

5.3 Blacklists and Non-Cooperative Jurisdictions

As a member state of the EU, Ireland has adopted the EU list of non-cooperative jurisdictions for tax purposes. The list currently includes American Samoa, Anguilla, Guam, Palau, Panama, Russia, Turks and Caicos Islands, the US Virgin Islands, Vanuatu and Vietnam.

The Finance (No 2) Act 2023 introduced certain defensive measures with effect from 1 April 2024, applying withholding taxes to outbound payments to associated entities of interest, dividends and royalties where the recipient is resident or situated in a jurisdiction that is on the EU list of non-cooperative jurisdictions or in a no-tax or zero-tax jurisdiction. Arrangements that were in place on or before 19 October 2023 were grandfathered to the later date of 1 January 2025. In broad terms, where Ireland's outbound payments defensive measures apply, they remove certain exclusions from the obligation to deduct withholding taxes and impose certain reporting obligations to Revenue on the payer.

5.4 Reporting Obligations and Disclosure Regimes

Ireland's Mandatory Reporting Regime

Mandatory disclosure rules exist in Ireland and require tax advisers to disclose any transaction, or any proposal for any transaction, that enables or might be expected to enable a person to obtain a tax advantage. The tax advantage must be the main, or one of the main, benefits of the transaction and the transaction must fall into one of the following categories.

- There is a need for confidentiality in relation to the scheme.
- The fees are significantly attributable to the tax advantage.
- The transaction involves standardised documentation, the form of which is largely determined by the promoter.
- The transaction gives rise to a tax advantage of a particular class prescribed in the regulations – eg, tax advantages arising from:
  (a) loss schemes for individuals;
  (b) loss schemes for companies;
  (c) employment schemes;
  (d) income into capital schemes; and
  (e) income into gift schemes.
- The transaction gives rise to a tax advantage where a party to that transaction is a trustee of a discretionary trust, and the trust is not of a type which is excluded from the requirement to disclose information by regulations.

A transaction is disclosable whether it is a "bespoke" transaction (designed for a particular person) or an "off-the-shelf" transaction (marketed with no specific client in mind). Bespoke schemes must be disclosed when any transaction forming part of a disclosable transaction is implemented. Disclosure of the details of such transactions must be made to Revenue within five working days of the date of the first transaction entered into by the client.

DAC6

EU Council Directive (2018/822) (DAC6) places an obligation on intermediaries to report certain cross-border arrangements which involve one or more of a list of specified "hallmarks". DAC6 was implemented into Irish law pursuant to the Finance Act 2019 and came into effect from 1 July 2020. Broadly, intermediaries are required to provide certain information regarding reportable cross-border arrangements to the Irish tax authorities, which automatically share the information they receive with all other EU member states. The DAC6 report must be filed 30 days after a reporting obligation is triggered.

DAC7

EU Council Directive (2021/514) (DAC7) was implemented into Irish law by the Finance Act 2022. DAC7 obliges certain platform operators to collect and automatically report information to Revenue on certain sellers using their platforms to earn consideration.

5.5 Role of Tax Authorities and Enforcement Measures

Revenue is the authority in Ireland responsible for enforcing tax laws, collecting taxes/duties and implementing customs controls.

The tax system in Ireland generally functions on a self-assessment basis, which means that it is the responsibility of the taxpayer to promptly file returns and pay the correct amount of tax. To the extent that errors are made by taxpayers in connection with their tax affairs, facilities exist to enable taxpayers to voluntarily address those errors and discharge any liabilities with reduced penalty exposure. In general, taxpayers are selected by Revenue for a compliance intervention based on the presence of various risk indicators. Revenue routinely uses analytics software to risk-profile taxpayers and tax risks on the basis of available data, with a view to identifying appropriate cases for a compliance intervention.

Revenue conducts all of its enquiries in line with the Code. The Code has a graduated, three-level compliance intervention framework as follows.

- Level 1 interventions are designed to support compliance by reminding taxpayers of their obligations and providing them with the opportunity to correct errors without initiating a more in-depth intervention.
- Level 2 interventions are designed to confront compliance risks based on the circumstances and

behaviour of the taxpayers, and range from a so-called "risk review" to a formal "audit".
- Level 3 interventions are designed to confront what Revenue perceives as high-risk practices and cases displaying risks of suspected fraud and tax evasion. Interventions within this level are termed "investigations".

Under each of the intervention levels, there is a fact-finding/evidence-gathering stage, during which Revenue will make enquiries and request information either by way of written correspondence/document review or on-site enquiries (using statutory information-gathering powers if necessary).

Revenue has relatively broad information-gathering powers in conducting its enquiries. Revenue officials have the power to enter premises/places where it is believed a trade or profession chargeable to tax is being carried out or associated business records are retained. Officials can require persons at the premises to produce business records, and those officials can also search the premises. Officials are entitled to remove records and retain them for further examination. The records within scope of production include written material and those records stored on electronic devices. A search warrant is generally required in order for a Revenue official to enter a private residence.

Revenue may also request information from third parties by serving notice in writing to that third party and informing the taxpayer that such a notice has been issued. Revenue also has extensive powers to request information from financial institutions.

When it comes to exercising its powers, Revenue generally seeks in the first instance to encourage voluntary compliance by taxpayers, but pursues non-compliance vigorously. In terms of limitations on Revenue, in general Revenue can only issue an amended assessment within four years from the end of the accounting period in which the relevant tax return is delivered. An exception to this general rule exists in the case of fraud or neglect (in which case there is no time limit on the making of assessments). The four-year time limit also does not apply where the return submitted by the taxpayer for the period does not contain a full and true disclosure of all material facts necessary for the making of an assessment for that period.

6. Penalties and Sanctions

6.1 Tax Penalties

Irish tax legislation contains civil and criminal penalties that can be imposed depending on the nature of the tax default.

Fixed penalties generally apply to breaches of the tax legislation focused on procedural administration (eg, for failure to file a return).

Tax-geared penalties generally apply in situations where the tax default gives rise to a tax liability, with the penalty amount being a percentage of the amount of tax underpaid. In this instance, the penalty can range anywhere from 3% to 100% depending on a number of factors. These factors include:

- whether the error was careless or deliberate and with/without significant tax consequences;
- whether the taxpayer made an unprompted or prompted qualifying disclosure of the error; and
- how co-operative the taxpayer is once the error has been disclosed or identified.

A penalty is not due where the aggregate amount of the tax or duty default is less than EUR6,000 and the default is not in the deliberate behaviour category.

Where Revenue forms the opinion that a taxpayer is liable to a penalty, the amount of the penalty is computed by Revenue and sought to be agreed with the taxpayer (and paid). Where a taxpayer does not agree to the penalty liability or does not pay a penalty which they have agreed to, a Notice of Opinion will be issued by Revenue to the taxpayer, outlining the amount of the penalty that Revenue asserts to be due.

Where the amount of the penalty is not agreed, Revenue can make an application to the District Court, Circuit Court or High Court for that court to determine whether the penalty is due. The appropriate court is determined by reference to the jurisdictional limits for civil matters. Where Revenue refers a matter to court,

and where the court makes a determination that the taxpayer is liable to a penalty and makes an order for the recovery of that penalty, Revenue will seek to recover the penalty as if it were tax.

6.2 Criminal Penalties

An investigation by Revenue may result in criminal implications for a taxpayer. The Director of Public Prosecutions (DPP), not Revenue, is the State body that ultimately makes the decision as to whether or not a person should be prosecuted. Those convicted of tax offences may be liable to a fine or imprisonment, or both.

Where a person is convicted of a revenue offence, on summary conviction the individual can be liable to a fine of up to EUR5,000 and/or a period of imprisonment of up to 12 months. Where a person is convicted of a revenue offence on indictment, the individual can be liable to a fine of up to EUR126,790 and/or a term of imprisonment of up to five years.

6.3 Interaction Between Tax and Criminal Procedures

Revenue's Code provides that where, in the course of a Level 2 or Level 3 intervention, Revenue uncovers information, not previously disclosed by the taxpayer, suggesting serious tax or duty evasion or that a revenue offence may have occurred, Revenue will inform the person by letter that a civil or criminal prosecution will be considered. As noted in **6.2 Criminal Penalties**, the final decision in relation to whether any criminal prosecution will be brought rests with the DPP.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Key Legal Instruments

There are several legal instruments that form the basis of administrative co-operation in tax matters in Ireland. Information may be exchanged under the following instruments.

Council Directive (EU) 2011/16 on administrative co-operation in the field of taxation, as amended (DAC)

The DAC covers exchange of information relating to taxes of any kind levied by or on behalf of an EU member state (excluding VAT, customs and EU excise duties, as these are covered by other EU legislation) and obliges certain information to be exchanged between all member states of the EU. Exchanged information can be used for the assessment, administration and enforcement of all taxes and duties. The DAC has been implemented in Ireland pursuant to the EU (Administrative Cooperation in the field of Taxation) Regulations 2012.

Ireland's tax treaties

All of Ireland's DTAs contain an exchange-of-information article (typically Article 26) that enables exchange of information. Ireland's older DTAs provide for exchange of information relating to direct taxes only, but more recent DTAs provide for exchange of information relating to taxes and duties of all kinds.

Ireland's Tax Information Exchange Agreements (TIEAs)

Ireland has a number of TIEAs in force. TIEAs typically cover exchange of information relating to direct taxes but, depending on the TIEA, other taxes can also be included.

OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (the "Convention")

The Convention, which has been implemented in Ireland pursuant to the provisions of the Mutual Assistance in Tax Matters Order (SI No 34 of 2013), enables exchange of information relating to direct taxes and taxes on net wealth.

7.2 Exchange of Information Clauses in Tax Agreements

As outlined in **7.1 Legal Framework for Administrative Co-Operation**, there are a number of mechanisms in place enabling Revenue to exchange information. Depending on the relevant mechanism, the exchange of information that Ireland engages in can be on request, spontaneous or automatic.

On Request

Exchange of information on request is facilitated under all of the mechanisms listed in **7.1 Legal Framework for Administrative Co-Operation**.

Spontaneous

All of the mechanisms listed in **7.1 Legal Framework for Administrative Co-Operation**, other than Ireland's TIEAs, provide for spontaneous exchange of information. For example, Article 9 of the DAC obliges EU member states to spontaneously exchange information where the tax base of another EU member state may be at risk.

Automatic

Ireland participates in a number of automatic exchange-of-information initiatives, some of which include the following.

Ireland and the USA automatically exchange information pursuant to the Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement, which is implemented in Ireland under Section 891E TCA and the Financial Accounts Reporting (United States of America) Regulations (as amended). The agreement provides for the bilateral and reciprocal exchange of information between Ireland and the USA in relation to accounts held in Irish financial institutions by US persons, and accounts held in US financial institutions by Irish tax residents.

Similarly, Ireland participates in automatic exchange of financial account information pursuant to the OECD's Common Reporting Standard (CRS) framework. The CRS is similar to FATCA, in that under the CRS participating jurisdictions exchange the financial account information of non-resident account holders with the jurisdiction of tax residence of the account holders. The CRS has been implemented in Ireland pursuant to Section 891F TCA and the Returns of Certain Information by Reporting Financial Institutions Regulations.

Council Directive (EU) 2015/2376 (DAC3) provides for the mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements (APAs) provided by Revenue to companies and other entities in respect of all taxes except VAT, customs duties, excise duties and compulsory social security contributions. With effect from 1 January 2026, Council Directive (EU) 2023/2226 (DAC8) expands the scope of DAC3 to include certain cross-border tax rulings involving individuals.

Country-by-Country Reporting (CbCR) has been implemented into Irish law under Section 891H TCA and the Taxes (Country-by-Country Reporting) Regulations. CbCR requires multinational groups with annual consolidated revenue of EUR750 million or more to file certain information with tax authorities, providing a global view of their operations and tax paid in the jurisdictions in which they operate. Revenue exchanges CbC reports filed with it with the competent authorities of relevant jurisdictions in which the multinational group operates on a quarterly basis. The exchange occurs under Ireland's DTAs, TIEAs or the Convention.

7.3 Other Forms of International Tax Collaboration

Joint Audits

In terms of other forms of international tax collaboration, a significant development for taxpayers in the EU in recent years has been the introduction of Article 12a of DAC7, which established a legal basis for joint audits between member states of the EU.

Article 12a was implemented into Irish law by the Finance (No 2) Act 2023, which introduced a new Section 891L TCA. The provision means that, for periods beginning on or after 1 January 2024, there is now a legal basis for Revenue and other EU tax authorities to conduct joint audits in Ireland. A joint audit is an administrative enquiry conducted by Revenue and the competent authority of another EU member state linked to one or more persons of common or complementary interest to both tax authorities. As a result of DAC7, it is expected that, going forward, taxpayers – particularly multinationals – will experience greater joint audit activity in the EU.

ICAP

Ireland also participates in the OECD's International Compliance Assurance Programme (ICAP) and the EU's European Trust and Cooperation Approach. The intention of both initiatives is to promote tax compliance on a co-operative basis between multinational

enterprises and tax administrations in the jurisdictions in which they operate. Similar to joint audits, while participation in such initiatives in Ireland has been limited to date, it is expected that engagement with such initiatives by multinationals may increase going forward as experience with them grows.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Ireland has a mutual agreement procedure (MAP) programme. Although Ireland only formally established its international transfer pricing branch and formalised its MAP programme in 2015, it did engage in MAPs prior to this.

In terms of legal basis, all of Ireland's tax treaties provide for MAPs, typically under Article 25 of its DTAs. In its most recent peer review report on Ireland, the OECD confirmed that Ireland meets all the minimum standard requirements regarding availability of and access to MAPs.

Taxpayers may also present a MAP request pursuant to the following mechanisms (although these avenues are limited to intra-EU disputes only):

- Article 6 of the EU Arbitration Convention in relation to transfer pricing-related adjustments or matters pertaining to allocation of profit to permanent establishments; and
- the EU Tax Dispute Resolution Mechanism (EU TDRM) where a dispute arises from the interpretation/application of a DTA or the EU Arbitration Convention in respect of income or capital earned in a tax year commencing on or after 1 January 2018.

8.2 Application Deadlines

The deadline for submitting a MAP request is determined by the relevant DTA. Ireland's tax treaties typically follow Article 25 of the MTC, which provides that a request for a MAP must be submitted within three years from the first notification of the event that results or is likely to result in taxation not in accordance with the DTA. The relevant DTA should always be consulted to confirm the applicable time limit in each case.

For applications that are made under the EU Arbitration Convention or the EU TDRM, the deadline is three years from the date of the first notification of the action resulting or likely to result in double taxation.

Revenue is also clear in their MAP guidance that any request submitted outside the time limit set forth in the relevant double tax treaty will not be accepted.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration may apply in connection with MAPs, depending on the avenue pursued.

DTAs

Certain of Ireland's DTAs contain mandatory binding arbitration clauses committing the contracting states to a process of arbitration in the event of no agreement being reached via a MAP. Ireland has opted into the mandatory binding arbitration clause in the MLI such that mandatory binding arbitration will apply to Irish DTAs where the treaty partner has also implemented the relevant provisions of the MLI. Regard must therefore be had to the particular DTA partner's status under the MLI.

EU Arbitration Convention

If resolution is not achieved within 24 months, an advisory committee is set up to decide the case and deliver a decision within six months (unless both competent authorities, by mutual agreement and with the agreement of the taxpayer concerned, waive the 24-month time limit). The competent authorities must then act within six months in accordance with that decision, unless they reach an alternative agreement to eliminate double taxation.

EU TDRM

If resolution is not achieved within 24 months (36 months where extended), the taxpayer can request that an advisory committee be set up to decide the case and deliver a decision within six months (or by extension nine months). The competent authorities must then act within the period unless they reach an alternative agreement to eliminate double taxation.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Ireland established an APA programme effective 1 July 2016. Prior to this, Ireland accepted requests for bilateral APAs on an ad hoc basis where a DTA partner agreed to enter into bilateral APA negotiations. The programme only applies to transfer pricing issues (including the attribution of profits to a PE).

In terms of the legal framework for APAs in Ireland, an APA is only available where Ireland has a DTA in place with the other jurisdiction concerned. In the absence of a DTA, Ireland cannot consider an APA application or engage in APA negotiations. The enabling provision for an APA under a DTA is the MAP article. As noted in **8.1 Availability and Legal Basis**, all of Ireland's DTAs contain a MAP article.

An application for a bilateral APA can be made by a company that is tax-resident in Ireland and by a PE of a non-resident company. Only cases that involve a transaction where the transfer pricing issues involved are complex and there is significant doubt, or where there would otherwise be a high likelihood of double taxation in the absence of an APA, will be accepted by Revenue into its APA programme.

The most recent APA statistics for Ireland show that in 2024 it concluded ten APAs, for which it was recognised as the most improved jurisdiction for APAs by the OECD for 2025.

9.2 Other Mechanisms

Co-Operative Compliance Framework

Revenue operates a Co-Operative Compliance Framework (CCF) to create and develop a relationship between taxpayers and Revenue with a view to achieving a high degree of tax compliance and certainty.

The CCF is a voluntary programme that is available to groups with annual turnover in excess of EUR350 million. Certain types of companies such as "Section 110 companies", funds (excluding REITs) and partnerships are excluded from joining the CCF.

The benefits for taxpayers who do participate can include fewer compliance interventions from Revenue and greater certainty in relation to their tax position.

Opinions

Revenue's guidance on APAs confirms that they will not enter into unilateral APAs (ie, an agreement solely between the taxpayer and Revenue and not involving another competent authority). Accordingly, purely domestic APAs are not a feature of the tax landscape in Ireland.

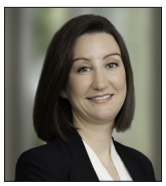
Revenue does, however, operate a system where taxpayers and their agents may seek an opinion from Revenue that the taxpayer's analysis of the tax consequences of a proposed course of action or transaction is acceptable to Revenue. In order for Revenue to issue an opinion in relation to a proposed transaction or activity, the request must satisfy certain conditions. Opinions are not binding on Revenue, the taxpayer or an Irish court. In practice, Revenue does not generally depart from its opinions unless any facts or assumptions underpinning the opinion change. When granted, an opinion lasts for a maximum of five years.

Trends and Developments

Contributed by:
Amelia O'Beirne and Trevor Glavey
A&L Goodbody

A&L Goodbody is one of Ireland's leading corporate law firms. Comprising A&L Goodbody LLP and related partnerships, the firm has 126 partners and 1,000 staff. Headquartered in Dublin, with offices in Belfast, London, New York and San Francisco, the firm has specialist teams across all practice areas of Irish corporate law. For over 100 years, A&L Goodbody has been at the centre of corporate Ireland, advising some of the largest and most influential corporates, both domestic and international. With a large operation in Belfast, the team provides full-service legal advice across the island of Ireland, working on significant cross-border mandates. With considerable international experience, the firm works closely with international law firms and other professional services advisers.

Authors



Amelia O'Beirne is a partner in A&L Goodbody's tax department. She has extensive experience in advising domestic and international clients on transactional matters, including public and private company M&A, debt and equity capital markets transactions and complex cross-border financing transactions, and on contentious matters such as tax authority enquiries and international tax disputes. Amelia regularly assists clients with resolving transfer pricing and other tax treaty-related issues through competent authority processes and the negotiation of advance pricing agreements. She has extensive experience in advising US multinationals on cross-border tax matters, having spent three years in the firm's New York office. Amelia represents a broad spectrum of clients in various industry sectors, including life sciences, technology, financial services and aircraft leasing.



Trevor Glavey is a partner in A&L Goodbody's tax department, and is both an Irish qualified lawyer and a chartered tax adviser. With over a decade of experience in advising companies in all industries with respect to all aspects of Irish corporate and international tax, Trevor specialises in international taxation, tax controversy and transfer pricing. In these areas, he advises multinational companies doing business in and from Ireland on their most complex and high-profile tax affairs.

A&L Goodbody

25 North Wall Quay
Dublin 1
D01 H104
Ireland

Tel: +353 1 649 2000
Web: www.algoodbody.com

Contributed by: Amelia O'Beirne and Trevor Glavey, **A&L Goodbody**

General Outlook

Taxpayers are facing unprecedented challenges in the current business environment. Over the past 12 months alone, they have been confronted with trade wars, geopolitical tensions, inflation concerns, competitiveness constraints and instability in the international tax system. The recent outbreak of war in the Middle East has also added to the backdrop of general uncertainty for businesses.

While GDP growth trends in the major economies and regions of the world were expected to hold steady for 2026 at 3% on average, bolstered by the performance of the US economy, these projections are currently being re-evaluated in light of recent developments. This is particularly so given the rapid rise in oil prices since the outbreak of the war in the Middle East. Where such price increases are not transitory, this may lead to the re-emergence of inflation, which would constitute a drag on economic growth prospects.

In an Irish context, there remains cautious optimism for the year ahead, albeit more tempered than was the case at the beginning of the year. The concerns that were evident at the beginning of 2025 with respect to US tariffs (in particular on pharmaceutical companies) have abated, with the tariff rate on Irish exports on average only approximately 3% higher than was the case prior to the current US administration taking office.

Having weathered the tariff threat during the first half of 2025, the second half of the year in Ireland brought with it strong levels of economic activity. This was evidenced by significant levels of M&A activity, with in excess of 450 deals being completed in the Irish market in 2025. Even with the increased volatility of late, these elevated deal levels are nonetheless expected to continue in 2026, driven in particular by the anticipated continued investment in artificial intelligence (AI) technologies and businesses.

International Tax Developments

At the international tax level, businesses need certainty so that they are able to make decisions with confidence as to their tax consequences. Equally importantly, countries need to be able to offer incentives to businesses to:

- encourage them into areas where the market may not have adequately responded; and/or
- enable smaller economies to sustainably and responsibly compete for foreign direct investment.

In this respect, the release on 5 January 2026 of the OECD's side-by-side package in respect of Pillar 2 brought welcome clarity. The package recognises that the US domestic tax regime can operate side-by-side with the OECD Pillar Two rules. As such, where a multinational group has a US parent, the group may be excluded from the application of the income inclusion rule and the undertaxed profits rule under Pillar Two, subject to electing for a safe harbour and satisfying certain conditions. Qualifying domestic minimum top-up taxes remain untouched.

On 8 January 2026, the European Commission issued a notice on the side-by-side package, confirming that it constitutes a "qualifying international agreement on safe harbours" under Article 32 of Council Directive (EU) 2022/2523 (ie, the "Pillar Two Directive"). For EU member states, the remainder of 2026 will be spent transposing the elements of the side-by-side package, as necessary, into their domestic law. In Ireland, legislation will need to be introduced to give effect to the side-by-side package, and it is expected that implementing legislation will be published in late 2026, but with retrospective effect for accounting periods commencing on or after 1 January 2026. Taxpayers within scope of the rules should therefore continue to monitor domestic implementation throughout 2026.

The progress made on the side-by-side package under Pillar Two stands in stark contrast to the current situation under Pillar One. Although jurisdictions such as Ireland and the USA have taken steps to implement Amount B, uptake generally has been slow. In addition, negotiations with respect to Amount A appear to have stalled. Where no further progress is made in this area, the possibility of greater fragmentation of the international tax framework is possible, including the potential re-emergence of digital services taxes in some jurisdictions.

Outside the two OECD Pillars, the Draghi Report in September 2024 clearly highlighted the competitiveness issues faced by the EU. It is hoped that the

European Commission and EU member states will continue their efforts in the area of tax simplification, with the aim of enhancing competitiveness in Europe. Failure to deliver on this agenda would constitute a missed opportunity and only serve to leave the EU further behind its international peers.

The liberation day tariff announcements have caused multinationals to more closely analyse their transfer pricing policies in a higher tariff environment. This has meant considering not only manufacturing footprints but also whether services and intellectual property should be separately dealt with. In this respect, transfer pricing models are evolving to become more granular and specific so as to ensure that customs prices are not capturing amounts relating to, for example, intangibles. This enhanced focus on the interaction between tariffs and transfer pricing is expected to continue, with more scrutiny being placed on the interaction by both taxpayers and tax authorities going forward. More generally in the area of transfer pricing, a development that taxpayers can look forward to in 2026 is a new consultation on future guidance in relation to high-value intra-group services, with the OECD aiming to publish a discussion document regarding updates to Chapter VII in the coming months.

In the area of international tax controversy, it is expected that the trends of recent years will continue, with the focus of tax administrations continuing to be on transfer pricing. In this respect, it is expected that areas such as valuations, licensing arrangements and financial transactions will continue to be at the forefront of audit activity for multinationals. With respect to valuations, it is expected that tax authorities will continue to closely scrutinise the question of whether valuations are arm's length and the reasonableness of the inputs – eg, projections, growth rates, and useful life in respect of intellectual property. When it comes to licensing, again tax authorities are expected to maintain their focus on the functional characterisation of parties, the appropriateness of transfer pricing methods, profit level indicators and the quality of comparables. There is no sign that audit activity in this area will slow down, and, given the significant sums involved, it is advisable that taxpayers take practical steps to prepare for audits in this area (eg, by preparing defence files).

Domestic Tax Developments

Changes to Ireland's interest regime

The Irish Department of Finance is currently consulting on proposals to reform Ireland's tax regime as it relates to interest. Ireland's rules relating to the taxation of interest have developed over many years in a piecemeal fashion, leading to a multitude of measures that are complex and overlap. The EU-mandated BEPS-related measures, and more recently Pillar 2, have brought into focus aspects of the Irish Tax Code as it relates to interest that are out of step with best practice in other developed economies and the EU. As part of its consultation process on the matter, the Department of Finance issued a Feedback Statement in November 2025 that contained a strawman outline of proposed changes to the regime. Some of the notable proposals include:

- the introduction of a "profit motive" test for interest deductibility;
- the extension of transfer pricing rules to medium-sized entities;
- amendments to Ireland's interest limitation rule; and
- amendments to how passive interest income is taxed.

The response by stakeholders to the proposals has been mixed, and developments in this area should be monitored by interested stakeholders throughout 2026. Further consultation is expected in April 2026 with rule changes to follow, taking account of stakeholder feedback.

Proposed Changes to Ireland's Tax Appeals Commission

The issue of taxpayer rights and the rules of procedure governing how taxpayers can challenge determinations or assessments of tax authorities is central to how certainty is provided to taxpayers. In this respect, proposals by Ireland's Department of Finance under the Revised General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill, regarding how the Irish Tax Appeals Commission (TAC, which is the first appellate body in Ireland from an assessment or determination by the Irish Revenue Commissioners) will operate, are noteworthy.

The amendments in question were proposed following a recent Supreme Court judgment in Ireland in the case of *Zalewski v Adjudication Officer and Others* [2021] IESC 24 that struck down a blanket ban on hearings of administrative bodies that exercise judicial functions being held in private. The legislation has been brought forward based on the view that the judgment has implications for the hearing and determination of tax appeals by the TAC. Significantly, the Bill will require appeal hearings to be held in public by default. The current legislation requires that a hearing or part of a hearing be held in private if requested by a taxpayer (failing which, the hearing would be held in public). Under the current system, such requests are made routinely by taxpayers. The proposed legislation would reverse this position in light of *Zalewski*.

Among other proposals, the Bill also seeks to ensure that redaction of determinations of the Appeal Commissioners only occurs in limited circumstances. Currently, determinations are redacted in respect of information that would identify the taxpayer and in respect of commercially sensitive information. This too is something that the proposed legislation would reverse in light of *Zalewski*.

The proposed changes have caused significant concern among taxpayers, practitioners and industry bodies, who have criticised them as running counter to the interests of justice due to the potentially "chilling effect" such changes could have on the willingness of taxpayers to challenge determinations or assessments of the Irish Revenue Commissioners.

The Bill is currently undergoing pre-legislation scrutiny, and further developments are expected in 2026. Taxpayers who are contemplating a dispute with the Irish Revenue Commissioners should monitor developments in respect of the Bill closely.

ITALY

Law and Practice



Contributed by:
Giuliano Foglia
Foglia & Partners

Contents

1. Sources and Principles p.211
1.1 Domestic Sources of International Tax Law p.211
1.2 Hierarchy of Sources p.211
1.3 OECD Model/United Nations Influence on Treaty Practice p.212
1.4 Multilateral Instrument p.212

2. Territoriality, Residence and Permanent Establishment p.212
2.1 General Principle of Territorial Taxation p.212
2.2 Tax Residence of Individuals p.212
2.3 Taxation of Resident Individuals p.213
2.4 Taxation of Non-Resident Individuals p.213
2.5 Tax Residence of Legal Entities p.214
2.6 Definition of Permanent Establishment p.215

3. Taxation of Cross-Border Income p.216
3.1 Income From Immovable Property p.216
3.2 Business Profits p.216
3.3 Passive Income p.217
3.4 Capital Gains p.219
3.5 Employment Income p.219
3.6 Other Income p.220

4. OECD/G20 Global Tax Reform p.220
4.1 Pillar One – Amount B p.220
4.2 Pillar One – Amount A p.220
4.3 Pillar Two p.220
4.4 Specific Features or Deviations of Pillar Two p.220
4.5 Digital Services Tax p.220

5. Anti-Avoidance and Anti-Evasion Measures p.221
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.221
5.2 Anti-Avoidance Mechanisms p.221
5.3 Blacklists and Non-Cooperative Jurisdictions p.222
5.4 Reporting Obligations and Disclosure Regimes p.222
5.5 Role of Tax Authorities and Enforcement Measures p.223

6. Penalties and Sanctions p.224
6.1 Tax Penalties p.224
6.2 Criminal Penalties p.224
6.3 Interaction Between Tax and Criminal Procedures p.224

7. Administrative Co-Operation p.225
7.1 Legal Framework for Administrative Co-Operation p.225
7.2 Exchange of Information Clauses in Tax Agreements p.225
7.3 Other Forms of International Tax Collaboration p.225

8. Mutual Agreement Procedures and Arbitration p.225
8.1 Availability and Legal Basis p.225
8.2 Application Deadlines p.226
8.3 Mandatory Binding Arbitration p.226

9. Dispute Prevention p.226
9.1 Advance Pricing Agreements p.226
9.2 Other Mechanisms p.227

Foglia & Partners is a boutique firm specialised in tax advisory in all main areas of domestic and international tax law. Established in 2016, based on the specialist skills, experience and strong client focus of its team of professionals, the firm is a landmark in tax advisory, particularly with respect to extraordinary transactions, corporate, financial and real estate taxation, as well as to HNWI and wealth management, transfer pricing and tax litigation. Foglia & Partners stands out for its specialised approach and assistance of the highest professional and human standing, supporting clients in the most complex strategic and management decisions as well as in day-to-day business. The high level of service provided and the continuous pursuit of excellence have enabled the Firm to achieve numerous awards and recognitions in Italy and abroad.

Author



Giuliano Foglia is the founding and name partner of Foglia & Partners. He holds a degree in economics and business administration and is a chartered accountant and statutory auditor. Giuliano previously served as a partner at a leading Italian law firm and developed extensive expertise within top-tier tax advisory firms. Throughout his career, he has supported major domestic companies and multinational groups on corporate taxation and complex regulatory matters. He has also advised high-net-worth individuals and private clients, providing assistance on personal taxation, wealth structuring and cross-border planning. His practice includes succession planning and wealth management, helping families preserve, optimise and transfer assets across generations through a strategic, integrated approach.

Foglia & Partners

Via Flaminia 141, 00196, Rome
Largo Schuster 1, 20122, Milan
Via Maggio 7, 50125, Florence

Tel: +39 06 68300655
Email: segreteria@fptax.it
Web: www.fogliandpartners.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main sources of international tax law are bilateral and multilateral tax treaties.

Italy has an extensive network of (more than 100) bilateral tax conventions, primarily aimed at preventing and/or mitigating double taxation on income and capital ("DTCs").

The Italian treaty network also includes specific agreements with a limited territorial scope, such as those regulating the taxation of cross-border workers (ie, the agreement concluded with Switzerland; see also the specific provisions included in Article 15 of the DTCs with Austria, France and San Marino).

A number of specific bilateral treaties address the avoidance of double taxation with respect to inheritance and gift taxes (ie, the agreement on inheritance and gift taxes with France and those on inheritance tax with Denmark, Greece, Israel, Sweden, the UK and the US).

Tax Information Exchange Agreements ("TIEA") have been concluded with specific low tax jurisdictions (Andorra, Bermuda, Cayman Islands, Cook Islands, Guernsey, Gibraltar, Isle of Man, Jersey, Liechtenstein, Monaco and Turkmenistan) to ensure a minimum standard of effective exchange of information on a bilateral basis.

In addition to bilateral agreements, Italy is a party to multilateral agreements, usually concluded to promote and foster administrative cooperation and assistance among States (see **8.1 Availability and Legal Basis**).

In addition to the bilateral and multilateral instruments, Italy is bound, as a Member State of the European Union ("EU"), by EU Treaties and legislation, as interpreted by the European Court of Justice, that have primacy over domestic law, with the consequence that Italian public administration and Italian courts have the obligation not to apply the domestic legislation conflicting with the EU one.

Among EU legislation, Directives play an important role, harmonising the domestic legislation of Member States in specific areas of law. A wide range of Directives has been used in direct tax matters (eg, Merger Directive, Parent-Subsidiary Directive, Interest and Royalties Directive, ATAD, Pillar Two Directive) and in the field of administrative cooperation between national tax authorities (ie, the eight DACs).

An important role, especially as a standard for interpretation, is also played by soft law instruments, such as (at EU level) recommendations and opinions of the EU Commission and (at an international level) the OECD Commentaries on the OECD Model, the OECD Transfer Pricing Guidelines and the BEPS Action Reports.

1.2 Hierarchy of Sources

In the Italian legal system, the rules set out in international tax treaties and in EU law are only subordinate to the inviolable principles and fundamental rights of the Italian Constitution and prevail over any conflicting internal statutory and regulatory rules. This follows from the principles established in Articles 10 and 117 (1) of the Italian Constitution, which provide, respectively, that Italy aligns with the generally accepted rules of international law and that the legislative power of the Italian State and the Italian Regions shall be exercised in compliance with the constraints deriving from EU legislation and international obligations.

The primacy of the rules set out in DTCs over domestic tax provisions is also recognised in the domestic legislation. For example, Article 75 of Presidential Decree No 600/1973 and Article 41 of Presidential Decree No 601/1973 recognise the applicability of DTC provisions over Italian domestic rules on income taxes and tax allowances. Article 169 of Presidential Decree No 917/1986 (the "Income Tax Code" or "ITC") also confirms the general principle of the prevalence of DTCs over domestic tax law; however, it provides that domestic tax provisions continue to apply, if they are more favourable to the taxpayer, even by way of derogation from DTCs.

As established by the consistent case-law of the ECJ (since the landmark decisions in Costa v Enel, van Gend en Loos and Simmenthal), the primacy of EU law over domestic law is ensured through the mecha-

nism of non-application of the conflicting domestic provisions by Italian public administration and national courts.

1.3 OECD Model/United Nations Influence on Treaty Practice

DTCs concluded by Italy are largely drafted in accordance with the provisions of the OECD Model Tax Convention ("OECD Model"), although certain departures can be found across its treaty network.

Among the main departures, it is worth mentioning the following:

- with regard to the taxation of income from independent personal services and the related notions of "enterprise" and "business," most of the Italian DTCs continue to include a separate provision broadly reflecting Article 14 of the OECD Model (before its deletion in 2000);
- in a relevant number of DTCs, Italy allows the source State to levy limited taxation on outbound royalties, in line with the reservation expressed in Article 12 (1) of the OECD Model, consistent with the approach adopted by the UN Model Double Taxation Convention ("UN Model"). At the same time, Italy often reserves a more favourable treatment to certain categories of royalties (eg, those relating to copyrights on literary, artistic or scientific works), granting full exemption from source-state taxation (eg, DTCs with Denmark, Germany and France);
- some of the DTCs concluded by Italy with developing countries (eg, Chile, Hong Kong, Mexico and Panama) and some of the most recent ones (ie, Colombia, Jamaica and Uruguay) are strongly influenced by the UN Model, retaining nevertheless elements typical of the OECD Model (eg, rules governing the attribution of profits to permanent establishments).

1.4 Multilateral Instrument

Italy is a signatory party to the OECD Multilateral Instrument ("MLI") since 7 June 2017.

As of today, Italy has not ratified the MLI yet and thus, the MLI is not in force and does not affect the Italian treaty network.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Italian tax law applies throughout the territory of the Italian Republic, is binding on all persons to whom it is addressed and may be applied and enforced by the public administration and national courts.

No territories outside Italy are subject to Italian tax law, with the sole exception of the municipality of Campione d'Italia (geographically located in Switzerland).

2.2 Tax Residence of Individuals

Article 2 of the ITC provides that individuals are deemed to be resident in the territory of Italy for tax purposes if, for more than 183 days in a calendar year, considering also fractions of a day, they meet (alternatively) one of the following conditions:

- they are registered with the Registry of the Italian Resident Population (so-called "Anagrafe") of an Italian Municipality;
- they have their "domicile" in Italy;
- they have their "residence" (as defined in the Italian Civil Code) in Italy;
- they are physically present in Italy.

The registration with the Anagrafe of an Italian Municipality is a criterion of a merely formal nature, based solely on the circumstance that the habitual abode or the domicile of an individual is registered with the Anagrafe. It constitutes a rebuttable presumption for the Italian Tax Authorities.

For tax residence purposes, domicile must be intended as the place where the taxpayer's personal and family relations are primarily developed. As clarified by the Italian Revenue Agency in Circular Letter No 20/2024, "personal and family relations" encompasses not only legal relationships established by law (such as marriage or civil unions), but also stable personal relationships that demonstrate a connection to Italy (for example, cohabitation). It further includes ongoing documented social connections (such as annual membership in cultural or sports clubs) and behaviours that clearly indicate an intention to maintain a meaningful link to Italy (such as maintaining a home

with active utilities that is regularly used on weekends or during leisure time).

According to the civil law notion of residence, an individual is considered resident in Italy if he has his habitual abode therein, meaning that he has a place at his disposal where he remains and/or returns with a certain degree of stability and continuity, with the intent to live in that place permanently.

Lastly, with effect from 1 January 2024, a new criterion based solely on physical presence in the State's territory has been introduced. In this respect, the presence in the Italian territory, even for fractions of the day, amounts to presence in Italy for the entire day. As clarified in Circular Letter No 20/2024, particular situations where the presence in Italy is merely temporary or incidental can be evaluated to exclude tax residence in Italy (eg, an airport transfer in Italy in the course of a trip from and to foreign countries).

Italian tax law does not contain a domestic split-year provision. A similar clause is included only in the DTCs with Germany, Panama and Switzerland.

2.3 Taxation of Resident Individuals

Individuals who are tax residents in Italy are subject to tax on their worldwide income at progressive tax rates (the maximum rate is 43% on taxable income exceeding EUR50,000).

Possible double taxation arising from taxes levied in the foreign source State could be mitigated with the application of a credit for taxes paid abroad. According to Article 165 of the ITC, taxes paid abroad can be credited, provided that the following conditions are cumulatively met:

- income on which foreign taxes have been paid is considered a foreign-sourced income (see **2.4 Taxation of Non-Resident Individuals**);
- income on which foreign taxes have been paid is included in the taxable income for the purposes of Italian income taxes;
- foreign taxes have been effectively and finally paid abroad.

If the above conditions are fulfilled, the tax credit that can be offset against net taxes due would be subject to the following limitations:

- it can be considered only up to the portion of Italian taxes due corresponding to the ratio between foreign-sourced income and overall income; and
- in any case, up to the amount of net tax due in Italy.

In addition to the provisions of Article 165 of the ITC, the tax credit provisions of the applicable DTCs also apply. As interpreted by the Italian Supreme Court of Cassation in its recent case law, if the content of the two provisions differs, the conventional one (if more favourable to the taxpayer, as it generally is) should prevail.

An interesting example of that is the interpretation of the qualifying condition regarding the inclusion of foreign income in taxable income for Italian income tax purposes. This condition implies that, where an item of income is subject in Italy to final withholding tax or to substitute tax (eg, dividends received by Italian resident individuals), it is not included in taxable income and cannot benefit from the tax credit under domestic rules.

Decision No 25698/2022 of the Italian Supreme Court of Cassation addressed the taxpayer's entitlement to a foreign tax credit on dividends received. The Court held that this entitlement exists if the relevant double taxation convention contains a clause providing that a tax credit should be granted when income is mandatorily subject to withholding or substitute tax – in such cases, the convention's provisions on tax credits prevail over the domestic rules in Article 165 of the ITC. This applies specifically when the taxpayer does not have the option to include the income in the personal income tax base.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals are taxed in Italy only on income that is considered to have an Italian source. Specific rules determine which types of income are regarded as sourced in Italy.

In particular, pursuant to Article 23 of the ITC, the following income is deemed to be produced or realised in Italy:

- income from immovable property located in Italy;
- income from capital paid by the Italian resident/located entities, with the exclusion of interest on bank and postal accounts;
- income from employment and self-employment, if the work activity is physically performed when present in Italy;
- business income derived from activities carried on in Italy through a permanent establishment;
- other income derived from activities carried on in Italy or related to assets located in Italy, as well as from the sale of participations in resident companies;
- income derived by a non-resident partner of a resident partnership;
- pensions, similar allowances and termination payments, as well as income assimilated to employment income, when paid by the Italian resident/located entities;
- income from the use of intellectual property, industrial patents, trademarks, processes, as well as formula and know-how acquired in the industrial, commercial or scientific field, when paid by Italian resident/located entities; and
- compensation earned by enterprises, companies or non-resident entities for the performance of artistic or professional services on their behalf in Italy, if paid by Italian resident/located entities.

2.5 Tax Residence of Legal Entities

Article 73 (3) of the ITC provides that a company or an entity is deemed to be tax resident in Italy for income tax purposes if it has, for more than 183 days in a tax period, any of the following alternative elements located in the Italian territory:

- the registered office;
- the place of effective management ("POEM");
- the principal place of ordinary management.

The requirement of the registered office is a criterion of a merely formal nature, solely based on the place indicated in the legal entity's bylaws.

The POEM refers to the location where the essential management and commercial decisions for a business are actually made. It is the place where the company's top management regularly makes strategic decisions that affect the company as a whole. This is true regardless of the governance model in place and requires that such decision-making be consistent and of a significant degree of permanence.

The other substantial requirement concerns the identification of the place where the company's normal functioning and ordinary administration are carried out. As clarified in Circular Letter No 20/2024, the indicators for the location of day-to-day management may vary depending on the main activity carried out,, as well as the company's business structure and organisation.

The residence of undertakings for collective investments is determined exclusively by their place of establishment. Therefore, undertakings for collective investments are considered Italian tax residents if established in Italy.

Lastly, according to Article 73 (5-bis) of the ITC, the following rebuttable presumptions of tax residence apply:

- companies and entities holding controlling shareholdings in Italian resident companies are presumed to be resident in Italy, if they are, alternatively:
  (a) controlled, also indirectly, by Italian resident companies; or
  (b) managed by a board of directors (or other equivalent management body) composed mainly of directors who are tax residents in Italy; and
- trusts and similar arrangements established in jurisdictions that do not allow an exchange of information with Italy are presumed to be resident in Italy, if, alternatively:
  (a) at least one of the settlors and at least one of the beneficiaries are both Italian tax residents; or
  (b) an Italian tax resident person contributes to the trust's real estate assets or rights.

2.6 Definition of Permanent Establishment

The domestic definition of permanent establishment ("PE") is provided by Article 162 of the ITC, whose current version is the result of the amendments made by Law No 205/2017 that has aligned the domestic notion to the one contained in the latest version of the OECD Model (2017), which, in turn, has incorporated the conclusions of the Final Report on Action 7 of the OECD BEPS Project.

In addition to the examples of places of business that can be regarded as constituting a material PE under Article 5 (2) of the OECD Model (so-called "positive list"), Article 162 (2)(f-bis) of the ITC includes the case of a significant and continuous economic presence in the Italian territory, without any physical presence therein. Such an example has been included primarily to address issues related to the profits generated by digital businesses.

The definition of construction PE provides for a three-month threshold (Article 162 (3) of the ITC), shorter than the one provided for in Article 5 (3) of the OECD Model (12 months).

In line with Article 5 of the OECD Model, the Italian domestic provision includes a rule subjecting all the exceptions to the existence of a PE (so-called "negative list") of paragraph 4 to the "preparatory and auxiliary" condition (Article 162 (4-bis) of the ITC) and the so-called anti-fragmentation rule (Article 162 (5) of the ITC).

The domestic notion of agent PE set forth by Article 162 (6) of the ITC only refers to persons "operating" for the conclusion of contracts that are routinely concluded without material modification by the foreign enterprise, without requiring (as Article 5 (5) of the OECD Model) that they should also play the "principal role" in this respect.

Article 162 (7-ter – 7-quinquies) of the ITC contains a safe-harbour from the existence of an agent PE for asset managers or advisory companies operating in Italy and acting on behalf of foreign investment vehicles or their controlled entities (so-called investment management exemption" or "IME"). Under the IME, the former entities are considered independent and, thus, do not give rise to an agent PE of the foreign investment funds or of the other entities of the investment structure (to be noted that, as clarified in Circular Letter No 23/2024, IME does not apply to exclude the existence of an agent PE of the non-Italian management company), if the following cumulative conditions are met:

- the investment funds and their (directly or indirectly) controlled entities for which the asset manager/advisory company operates are resident in a white-list jurisdiction;
- the investment funds meet specific requirements of independence (ie, professional management of investments in the interest of investors and autonomously from them, according to a predetermined investment policy; subjection to regulatory supervision; plurality of investors);
- the asset manager/advisory company does not have positions in management or supervisory bodies of the foreign investment funds (or of any of their direct or indirect subsidiaries) and is not entitled to more than 25% of the economic results; and
- the asset manager/advisory company supplying services within the same group is remunerated at arm's length and the remuneration is supported by adequate documentation prepared in accordance with the transfer pricing rules.

The great majority of the DTCs currently in force have been concluded on the basis of versions of the OECD Model that predate 2017. As those versions are usually more favourable to the taxpayers, the provisions of the relevant conventions should prevail over the current domestic definition of PE; in particular:

- no reference is made in the positive list to the significant and continuous economic presence in the Italian territory, without any physical presence therein;
- the definition of construction PE generally provides for a qualifying threshold higher than three months (six or 12 months);
- no reference is generally made to the "preparatory and auxiliary" condition in the negative list or to the anti-fragmentation rule;

- the notion of agent PE usually refers only to the case of persons habitually concluding contracts in the name of the foreign enterprise, without any reference to the activities leading to those contracts.

In respect to the last point above, it should be remarked that, in line with the observation made by Italy to the Commentaries on Article 5 (including that of 2017), Italy has always reserved the right to interpret, among others, the paragraphs of the Commentary dealing with the concept of "conclusion of contracts" by the agent (see paragraph 97 of the 2017 OECD Model) consistently with the case-law of the Italian Supreme Court of Cassation.

Since the early 2000s, the Italian Supreme Court has adopted a broader interpretation of the agent PE scope, embracing all cases where a person habitually concludes or operates for the conclusion of contracts in Italy that are concluded abroad without material modifications by the non-resident enterprise, without requiring that such a person plays the principal role leading to their conclusion. In this respect, for example, in the leading *Philip Morris case* (Decision No 7682/2002), the Italian Supreme Court held, inter alia, that the participation of representatives or employees of an Italian entity to the negotiation of contracts between a non-resident company and another resident entity could fall within the notion of "authority to conclude contracts in the name of the company", even if no power of representation is granted to the Italian entity.

With the recent update to the 2017 OECD Model (dated 18 November 2025), Italy has eliminated the aforementioned observation, effectively opening the way to a more OECD-oriented interpretation of the provisions of its DTCs.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Individuals

Rental income from real estate assets is subject to income tax at progressive rates on 95% of the amount. However, taxpayers may elect to opt for flat taxation with a 21% substitute tax.

Income from real estate assets located abroad is included in taxable income and subject to progressive income tax rates. The taxable amount equals the net income subject to tax in the situs country. If no foreign taxation applies, the taxable income equals the rental income minus a 15% forfeiture reduction. If the foreign real estate assets are not rented, no income taxes apply.

Capital gains from the sale of real estate assets are not subject to income taxes in Italy if:

- they have been used for the greater part of the time as the principal dwelling of the owner or his family;
- they are sold after five years from the purchase/construction (ten years from the end of the refurbishment works, in case the assets have been subjected to certain refurbishment works that entitle the owners to tax facilitations);
- they have been received by way of inheritance or donation.

If real estate assets are sold within five years (ten years in the case of refurbishment works) of purchase/construction, the related capital gains are subject to income tax at progressive rates. However, the taxpayer may elect, in the deed of sale, to apply a 26% substitute tax.

Italian resident individuals shall also pay an annual wealth tax on the value of real estate assets held in foreign countries at 1.06% tax rate.

Companies

Generally speaking, income from real estate derived by companies constitutes business income and is subject to corporate income tax ("CIT") pursuant to Article 81 of the ITC.

3.2 Business Profits

Individuals

Italian tax legislation regulates in detail the computation of business income and the criteria for evaluating assets and liabilities forming the working capital of individuals and partnerships carrying on commercial activity. Relevant rules are generally those applicable for the purposes of CIT, with the specific exceptions expressly provided (see Article 56 of the ITC).

In general terms, taxable business income is the income resulting from the profit and loss accounts, as adjusted in accordance with the applicable tax rules.

Business profits are taxable and business expenses are normally deductible on an accrual basis, with a few exceptions. Business expenses and other costs are deductible if and to the extent they are inherent to the activity carried out or to the assets producing taxable income, determined or reliably determined, certain as to the tax period they relate, charged to the profit and loss account of the tax period in which they accrue.

Italian commercial and non-commercial partnerships are fully transparent for tax purposes, meaning that income is attributed to the partners (in proportion to their participation in the profits) and taxed in their hands, regardless of actual distribution, at progressive tax rates.

Tax losses derived from business activities and those attributed by transparency are offset against other income derived by the individual and the possible excess can be carried forward, without any time limit, and offset against business income of the following tax period in the measure of 80% (Article 8 (3) of the ITC).

Companies

All income derived by companies that carry on commercial activities is considered business income and subject to CIT at 24% tax rate.

The taxable base for CIT purposes is the company's worldwide income as reported in the profit and loss account for the relevant financial year, prepared in accordance with applicable accounting standards and adjusted in accordance with relevant tax law provisions.

Revenues and expenses have, in principle, tax relevance on an accrual basis, in accordance with Article 109 of the ITC. Specific exceptions to the accrual principle are established in relation to peculiar items of income/expenses, such as dividends and directors' fees.

3.3 Passive Income

Dividends

Inbound dividends

Dividends received by resident individuals are subject to a 26% final withholding tax or substitute tax.

Dividends received by resident individuals in the exercise of a business activity, commercial partnerships and companies are partially included in the taxable base for income tax purposes (in the measure of 58.14% for individuals/partnerships and 5% for companies).

Outbound dividends

Dividends paid by Italian resident entities to non-resident shareholders are, in principle, subject to a 26% final withholding tax pursuant to Article 27 of Presidential Decree No 600/1973.

The following domestic reduced tax rates or exemptions apply:

- pursuant to Article 27 (3-ter) of Presidential Decree No 600/1973, a reduced 1.2% withholding tax applies, provided that the recipient of the dividends is an entity that is subject to CIT in an EU/EEA State and is tax resident therein;
- pursuant to Article 27 (3) of Presidential Decree No 600/1973, dividends paid to EU/EEA established undertakings for collective investment ("UCIs"), provided that either the UCIs are established according to the Directive 2009/65/EC (so-called "UCITS Directive") or their fund manager is subject to regulatory supervision in its country of establishment according to Directive 2011/61/EU ("AIFM Directive"); and
- pursuant to Article 27-bis of Presidential Decree No 600/1973, implementing Directive 2011/96/EU (so-called Parent-Subsidiary Directive or PSD), no withholding tax is levied, if the relevant conditions are met, on dividends paid to an EU parent company holding a direct shareholding of at least 10%.

In addition, the domestic withholding tax rate can also be reduced (generally, to 15%) pursuant to the relevant provisions of the applicable DTCs. As an alternative to the conventional mitigation, the taxpayer may claim a refund up to 11/26 of the withholding tax applied,

provided that it has paid final taxes on dividends in its residence State (Article 27 (3) of Presidential Decree No 600/1973).

Interest

Inbound interest

Interest income on loans granted to Italian resident individuals is included in the taxable base for income tax purposes and taxed at progressive tax rates. The payment is subject to a 26% advance withholding tax.

Pursuant to Articles 1 and 2 of Legislative Decree No 239/1996, interest income received by Italian resident individuals on bonds issued by both Italian and foreign banks, listed companies, as well as Italian and foreign listed bonds, are subject to a 26% substitute tax (12.5% substitute tax, if the bonds are issued by the Italian Government or by the governments of white-list jurisdictions).

Withholding and substitute taxes are levied by Italian financial intermediaries that intervene in the payment. Pursuant to Article 18 of the ITC, if the foreign-sourced interest is not received or paid through an Italian intermediary, taxpayers must report it in the income tax return and apply the substitute taxation. However, the taxpayer may elect to include the interest in taxable income for individual income tax at progressive rates and, in such a case, be entitled to the foreign tax credit.

Interest received by companies is ordinarily included in the taxable income, subject to CIT at 24% rate.

Outbound interest

Interest paid by Italian resident entities to non-resident shareholders is, in principle, subject to a 26% final withholding tax pursuant to Article 26 of Presidential Decree No 600/1973. A 12.5% rate applies to interest on government bonds.

The following domestic reduced tax rates or exemptions apply:

- pursuant to Article 26 (5-bis) of Presidential Decree No 600/1973, interest paid on medium/long-term loans granted to Italian companies by EU/EEA banks and insurance companies, as well as institutional investors resident in white-list jurisdictions, is exempt from withholding tax;
- pursuant to Article 26-quater of Presidential Decree No 600/1973, implementing Directive 2003/49/EC (so-called Interest and Royalties Directive or IRD), no withholding tax is levied (if the relevant conditions are met) on interest paid to an associated EU company; and
- pursuant to the provisions of Article 6 of Legislative Decree No 239/1996, interest on bonds and similar instruments is exempt from withholding tax, provided that foreign-resident recipients qualify as:
  - (a) entities resident for tax purposes in a white-list jurisdiction;
  - (b) international organisations and bodies established under international agreements implemented and effective in Italy;
  - (c) foreign institutional investors established in white-list jurisdictions (eg, insurance companies, investment funds, SICAVs, pension funds and asset management companies); or
  - (d) central banks.

In addition, the domestic withholding tax rate can also be reduced (generally, to 10%) pursuant to the relevant provisions of the applicable DTCs.

Royalties

Inbound royalties

Royalties derived by the author/inventor of intellectual property, industrial inventions, processes, formulas and know-how are taxable on 75% of their amount (or 60% if the author/inventor is under 35).

Royalties derived by individuals other than the author/inventor are taxable on 75% of their amount if the assets generating the royalties have been acquired for consideration and on 100% of their amount if not acquired for consideration.

Royalties derived by companies are ordinarily included in the taxable income, subject to CIT at 24% rate.

Outbound royalties

Royalties paid by Italian resident entities to non-resident persons are subject to a 30% final withholding tax (Article 25 of Presidential Decree No 600/1973).

If the relevant conditions are met, withholding tax can be reduced (usually in a range of 5% to 15%) or exempt pursuant to the applicable provisions of the DTCs or under the domestic provisions implementing the IRD.

3.4 Capital Gains

Individuals

Capital gains realised by Italian resident individuals from the sale of shares, bonds and other financial instruments issued by both resident and non-resident entities are subject to a 26% substitute tax pursuant to Article 5 (2) of Legislative Decree No 461/1997.

If the alienator is a non-Italian resident individual, capital gains from the sale of non-listed non-substantial participations (ie, equal to at least 20% of voting right or 25% of participation in the capital) are exempt, with the exception of capital gains on participations whose value derives for more than 50% from real estate assets located in Italy (see Article 5 (5 – 5-bis) of Legislative Decree No 461/1997).

Capital gains realised by Italian resident individuals engaged in business activities are included in business income and are taxable at progressive tax rates. If the conditions for the application of the participation exemption regime apply, capital gains are 41.86% exempt.

Companies

Capital gains from the sale of participation are usually included in the taxable income, subject to CIT at 24% rate (see Article 86 of the ITC).

Under Article 87 of the ITC, the participation exemption ("PEX") regime exempts 95% of capital gains. The PEX regime applies if the following requirements are cumulatively fulfilled:

- the participation has been uninterruptedly held at least from the beginning of the 12th month preceding the sale;
- the participation has been booked as a fixed financial asset since the first financial statement closed after its acquisition;
- the participating company is resident in a jurisdiction without a privileged tax regime (see **6.3 Interaction Between Tax and Criminal Procedures**); and
- the participated company carries out a business activity.

Starting in 2024, following decisions by the Italian Supreme Court (No 21261/2023 and No 27267/2023), the PEX regime has been extended to address previous discrimination between non-Italian and Italian resident enterprises. As a result, non-resident companies and entities that do not have a permanent establishment in Italy but are subject to corporate income tax in an EU or EEA State can now benefit from the PEX regime for capital gains, provided all the previously mentioned conditions are met.

3.5 Employment Income

According to Article 51 of the ITC, all sums, including compensations/benefits in kind, received by employees, on whatever legal basis, in connection with their employment relationship, are considered part of the salary and are subject to tax at progressive rates. Taxes on employment income (including compensation/benefits in kind) are levied at source by employers.

According to Article 51 (8-bis) of the ITC, remunerations received by employees from an activity permanently performed abroad are taxable on a forfeit basis, according to the amount determined by a specific annual Ministerial Decree, provided that the activity performed abroad is the exclusive object of the employment and the employee stays abroad for more than 183 days in a 12-month period.

According to the consistent administrative practice of the Italian Revenue Agency (see Resolution No 92/2009, Rulings No 199/2025 and No 8/2026), employment income from employees' incentive plans attributed and vested (wholly or partially) outside Italy but paid in a tax period when the employee is tax resident in Italy are considered fully taxable in Italy on a cash basis, with the possibility to offset the related tax credit for taxes paid abroad.

Cross-border workers benefit from preferential tax provisions under both specific domestic rules (eg, an exempt threshold of EUR10,000) and international

agreements (eg, exclusive taxation either in the State of source or in the State of residence).

International remote working has not been specifically addressed by Italian tax legislation. However, the Italian Revenue Agency has issued specific guidelines in Circular Letter No 25/2023, clarifying that remote working does not affect ordinary domestic and treaty-based rules regarding:

- the residence of individuals;
- the territoriality of employment income; and
- the criteria for the existence of a PE of the foreign employer in Italy.

3.6 Other Income

There is nothing else that would worth highlighting in this jurisdiction.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As of now, Italy has not taken any steps to adopt or implement Amount B.

4.2 Pillar One – Amount A

Italy does not have a clearly articulated, standalone official position on Pillar One Amount A.

4.3 Pillar Two

Italy has introduced the global minimum tax under Pillar Two, implementing Directive (EU) 2022/2523 ("Pillar Two Directive") through Articles 8-60 of the Legislative Decree No 209/2023.

The provisions on the global minimum tax apply to tax periods starting on or after 31 December 2023, except for those regulating the UTPR, which apply to tax periods starting on or after 31 December 2024.

4.4 Specific Features or Deviations of Pillar Two

Italian domestic implementing provisions do not contain any deviations from the provisions of the Pillar Two Directive.

As a consequence, in line with the Directive, the domestic provisions differ from the OECD Model Rules in the following aspects:

- the scope of application is extended to domestic groups, in addition to multinational groups, exceeding the threshold of EUR750 million; and
- all entities located in a low-tax Member State are subject to top-up tax, including ultimate parent entities.

4.5 Digital Services Tax

The Digital Services Tax (DST) has been effective in Italy since 1 January 2020, pending international negotiations to reach agreed solutions to address the taxation of the digital economy. Consistently, a specific "sunset clause" provides that the DST is repealed once those solutions enter into force (note that this effect would have been achieved with the entry into force of the implementing provisions of Pillar One-Amount A).

The DST applies to resident and non-resident entities carrying on business activities that, individually or at group level, realise revenues from the supply of digital services and generate worldwide revenues of at least EUR750 million.

The DST applies to revenues derived from three categories of digital services:

- targeted advertising on digital interfaces;
- provision of multilateral digital interfaces that allow users to stay in contact and interact with each other, also for the purposes of facilitating the supply of goods and services; and
- transmission for the consideration of data collected from users.

Excluded from the scope of the DST are, inter alia, the direct supply of goods and services, the provision of multilateral digital interfaces for the supply of financial services, payment services, digital contents, communication services, as well as certain energy trading platforms.

The territoriality of the DST is determined by the user's location in Italy when using the specific digital service,

as reflected in the device's location (determined by IP address or other geolocation tools).

The taxable base consists of taxable revenues net of VAT and other indirect taxes, excluding revenue from intra-group transactions. The applicable tax rate is 3%.

As clarified by the Italian Revenue Agency in the Circular Letter No 3/2021, the DST qualifies as an indirect tax and, as a consequence, falls outside the scope of DTCs.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax evasion consists of an unlawful and illegitimate conduct which directly violates specific tax provisions. If tax evasion is carried out through artificial conduct apt to create a false representation of reality, it could amount to tax fraud (see Article 1 (1)(g-ter) of Legislative Decree No 74/2000).

Contrary to tax evasion, tax avoidance does not involve any violation of tax provisions; rather, it is a lawful conduct aimed at circumventing the rationale or the application of specific tax provisions or principles of the tax system. The Italian tax system has several provisions addressing both general tax avoidance (ie, the general anti-avoidance rule, or "GAAR") and specific abusive results arising from particular transactions or income items (so-called specific anti-avoidance rules, or "SAARs").

Contrary to tax evasion and tax fraud, tax avoidance does not trigger criminal liability (see Article 10-bis(13) of Law No 212/2000).

5.2 Anti-Avoidance Mechanisms

The main anti-avoidance mechanism is the Italian GAAR, which applies where no specific SAARs could apply.

Under the Italian GAAR, abuse of law exists if a transaction lacks economic substance and, although formally consistent with tax law, is intended to obtain undue tax benefits. In particular, a transaction constitutes abuse of law if the following conditions are cumulatively met:

- the transaction has no economic substance (ie, those unsuitable to realise significant effects other than tax benefits);
- the transaction gives rise to undue tax benefits (ie, a tax saving obtained contrary to the purposes of the relevant tax law provisions and/or of the principles of the tax law system); and
- the realisation of the undue tax benefits is the essential effect of the transaction.

As pointed out in the recent guidelines issued by the Italian Ministry of Economy and Finance on the application of the Italian GAAR dated 27 February 2025, in the scrutiny on the existence of an abuse, primary importance should be given to the assessment of the existence of an undue tax benefit, so that its non-existence excludes per se the abusive nature of the conduct, without need to assess the occurrence of the other qualifying conditions.

In any case, a transaction should not constitute an abuse of law if it is justified by valid economic reasons (which are more than marginal), including managerial and organisational needs apt to structurally and functionally improve the taxpayer's business.

The existence of valid non-marginal economic reasons must be assessed by verifying whether the transaction would have been carried out in the absence of those reasons. The burden of proving them is on the taxpayer.

In the event of a challenge under the Italian GAAR, the Italian Revenue Agency should comply with specific procedural requirements that allow the taxpayer to demonstrate that no abuse occurred.

5.3 Blacklists and Non-Cooperative Jurisdictions

The Italian tax system provides several lists of non-cooperative/high-risk jurisdictions used in the application of specific anti-abuse regimes.

Tax Residence for Individuals

Pursuant to Article 2 (2-bis) of the ITC, Italian citizens moving their tax residence to the countries included in the list of jurisdictions with a privileged tax regime contained in the Ministerial Decree of 4 May 1999 are considered, by rebuttable presumption, still resident in Italy, subject to all the tax obligations of resident persons.

Foreign-Sourced Dividends and Capital Gains

Article 47-bis of the ITC sets out the criteria for qualifying a foreign company as a resident of a privileged tax jurisdiction. In particular:

- foreign-controlled entities are considered to benefit from a privileged tax regime if they are subject to an effective tax rate 50% lower than the one applicable had the entity been resident in Italy. A simplified test, requiring the assessment of an effective taxation lower than 15%, could apply in case the financial statements of the controlled entities are certified by professional subjects and those certifications are used by the auditors of the controlling company to certify its own financial statements; or
- foreign non-controlled entities are considered to benefit from a privileged tax regime if the nominal tax rate is 50% lower than the one applicable in Italy.

In any case, entities that are resident in EU/EEA States cannot be considered as benefitting from a privileged tax regime.

The provisions of Article 47-bis of the ITC affect, in particular, the Italian tax regime applicable to dividends distributed by and capital gains realised from the sale of participation in entities benefitting from a privileged tax regime. In such a case, both dividends and capital gains are included in the taxable basis and taxed at a 24% rate, rather than benefiting from dividend/participation exemption regimes.

Controlled Foreign Company

Foreign-controlled entities are subject to the CFC legislation if:

- are considered as benefiting from a privileged tax regime according to the criteria of Article 47-bis of the ITC;
- more than 1/3 of their income consists of passive income (ie, interest, dividends, royalties, capital gains, income from financial leasing, insurance, banking and other financial activities, sale of goods and provision of low-value services to related parties).

In case CFC legislation applies, income generated by the foreign-controlled entities is attributed to the Italian controlling entity/individual in proportion to its share in the profits and taxed at its average tax rate (in any case, not lower than 24%).

Black-List Costs

Article 110 (9-bis – 9-quinquies) of the ITC provides that costs and expenses arising from transactions, effectively executed, with entities and professionals located in jurisdictions non-cooperative for tax purposes can be deducted up to their market value. The amount exceeding the market value may be deductible, provided the taxpayer can prove it has an actual economic interest in the transactions.

Countries and territories considered as non-cooperative for tax purposes are those jurisdictions listed in Annex I to the EU list of non-cooperative jurisdictions for tax purposes, adopted by conclusions of the EU Council.

5.4 Reporting Obligations and Disclosure Regimes

The Italian tax law imposes specific reporting obligations to prevent tax fraud and evasion on both taxpayers and financial intermediaries.

RW Form

Pursuant to Article 4 of Legislative Decree No 167/1990, individuals, non-commercial entities and non-commercial partnerships resident in Italy for tax purposes must report, in the RW Form of their income tax return, real estate assets and rights and financial

assets and investments held abroad during the relevant tax period that may give rise to taxable income in Italy.

Under certain conditions, the reporting obligation also applies to Italian residents who are "beneficial owners" of assets and rights held abroad, even if formally owned by other persons (eg, trusts, foundations and similar arrangements).

Assets to be reported include:

- participations in non-Italian entities;
- units of non-Italian funds;
- foreign currencies;
- crypto-assets;
- deposits and bank accounts;
- financial and derivative contracts with non-Italian counterparties (eg, loans, repo agreements);
- insurance policies with non-Italian insurance companies;
- stock options issued by non-Italian companies;
- yachts and other vehicles subject to registration in foreign public registers; and
- valuables and works of art held outside Italy.

Tax Monitoring of Financial Intermediaries

Under Article 1 of Legislative Decree No 167/1990, banks, financial intermediaries and other financial operators must report to the Italian Revenue Agency any transfers of money to and from abroad with a value of at least EUR5,000. This reporting obligation also applies to transactions involving crypto assets.

DAC6 Directive

Italy has implemented Directive (EU) 2018/822 (DAC6) through Legislative Decree No 100/2020.

DAC 6 Directive provides for the automatic exchange of information on certain cross-border arrangements within the European Union and between Member States and third countries.

The obligation to report relevant cross-border arrangements to the Italian Revenue Agency lies on the intermediaries that design or promote a reportable arrangement and, ultimately, on the relevant taxpayers.

5.5 Role of Tax Authorities and Enforcement Measures

Both the Italian Revenue Agency and the Italian Tax Police ("Guardia di Finanza") (jointly, the Italian Tax Authorities) are competent to perform control and assessment activities to verify the correct fulfilment of tax obligations. However, the Italian Revenue Agency is the sole body competent to issue final assessment and payment notices.

Generally speaking, Italian Tax Authorities carry out control activities on the tax returns filed, first through computerised procedures and documentary checks ("formal audits"), then through full audits.

Formal audits are mainly aimed at assessing the correctness of tax returns and are carried out through:

- computerised procedures targeted to assess that data reported and taxes calculated in the tax returns are consistent with the data directly present in the tax returns themselves, as well as with those held in the database of the Italian Tax Authorities;
- documentation and information requests to the taxpayers on the data reported on the tax returns.

Full audits consist of a deeper scrutiny of the correct fulfilment of taxpayers' general tax obligations. Italian Tax Authorities can carry out substantive audits through different means:

- documentation and information requests to the taxpayers;
- access and inspections, upon specific authorisation by the competent bodies, at the taxpayers' premises (ie, home or premises used to perform economic activities);
- documentation and information requests to other bodies (eg, banks, which cannot oppose bank secrecy) or third parties (eg, notaries).

Moreover, more intrusive actions, which are generally permitted in the context of criminal investigations, such as searches and seizures, may be performed only under the authority of the public prosecutor.

Taxpayers' specific rights and guarantees during tax audits are mainly set out in Law No 212/2000.

6. Penalties and Sanctions

6.1 Tax Penalties

Administrative penalties, applicable to violations concerning both pure domestic and cross-border cases, are regulated by Legislative Decree No 471/1997 and are applied and enforced by the Italian Revenue Agency.

With specific regard to the violation of the obligation on resident individuals, non-commercial entities and partnerships to report the holding of real estate assets and rights and foreign financial assets and investments (see **5.4 Reporting Obligations and Disclosure Regimes**), a specific administrative penalty ranging from 3% to 15% of the non-reported value applies (see Article 5 of Legislative Decree No 167/1990).

The penalty is doubled if the assets and investments are held in countries included in the list of jurisdictions with a privileged tax regime set out in the Ministerial Decree of 4 May 1999. Moreover, in such a latter case, pursuant to Article 12 (2 – 2-bis) of Legislative Decree No 78/2009, two further consequences are triggered:

- the sums deposited in the non-reported foreign accounts are considered, by rebuttable presumption, as constituted by non-taxed income and should, therefore, be subjected to taxation; and
- the ordinary statute of limitation is doubled.

Specific penalty protection is provided for violations of transfer pricing adjustments and anti-hybrid rules, provided that taxpayers submit to the Italian Tax Authorities the specific documentation, prepared in line with the applicable regulations, apt to illustrate the application of the relevant provisions.

6.2 Criminal Penalties

In general terms, Italian tax criminal law seeks to prosecute offences that cause significant harm to the Treasury; therefore, in order to limit prosecution to violations with greater economic impacts, it is usually provided that tax violations trigger criminal liability only if the specifically determined statutory thresholds are exceeded.

Criminal tax offences are set out in Legislative Decree No 74/2000, with some of the major ones outlined below.

- The main tax offence aimed at punishing fraud is the fraudulent tax return, which may be committed by using invoices or other documents relating to sham transactions (Article 2) or by other fraudulent means (Article 3).
- Although not constituting fraud in the strict sense, specific conduct resulting in tax evasion may nevertheless trigger criminal liability, such as incorrect tax returns (Article 4) and failure to file a tax return (Article 5).
- Other offences are aimed at punishing conduct that facilitates or leads to tax evasion, such as the issuance of invoices for sham transactions (Article 8) and the concealment or destruction of accounting records (Article 10).
- Further offences punish the non-payment of taxes, including the failure to pay certified withholding taxes (Article 10-bis), VAT (Article 10-ter) and the improper offsetting of taxes (Article 10-quater).
- Finally, Article 11 punishes fraudulent acts committed by taxpayers with the purpose of subtracting their assets from the compulsory tax collection procedures carried out by the Italian Tax Authorities.

6.3 Interaction Between Tax and Criminal Procedures

When, in the course of a tax audit, facts emerge that may constitute a tax offence, the Italian Tax Authorities are obliged to promptly report the alleged criminal offence to the Public Prosecutor, pursuant to Articles 331 and 347 of the Italian Code of Criminal Procedure.

Similarly, under Article 129 (3-quarter) of the implementing provisions of the Italian Code of Criminal Procedure, when the public prosecutor initiates a criminal proceeding for tax offences, they must inform the Italian Tax Authorities of the charges.

As a general rule, tax and criminal proceedings are formally autonomous and independent (see Article 20 of Legislative Decree No 74/2000). Nevertheless, evidence collected in one proceeding can be brought in the other; in particular, evidence collected during

criminal investigations may be transmitted to the Tax Authorities subject to the authorisation of the public prosecutor (see Article 63 of Presidential Decree No 633/1972 and Article 33 of Presidential Decree No 600/1973), while sources of evidence acquired during tax administrative proceedings can be lawfully acquired to the criminal proceeding only if the Italian Tax Authorities have complied with the procedural safeguards laid down in the Italian Code of Criminal Procedure in collecting them (see Article 220 of the implementing provisions of the Italian Code of Criminal Procedure).

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Italy is a party to several legal instruments that foster administrative cooperation in tax matters.

Bilateral Conventions

The DTCs concluded by Italy, which are mainly drafted according to the OECD Model, contain a provision similar to Article 26 of the OECD Model, specifically allowing spontaneous and on-request exchange of information between contracting States.

In addition, Italy has concluded eleven Tax Information Exchange Agreements ("TIEA") (with Andorra, Bermuda, Cayman Islands, Cook Islands, Guernsey, Gibraltar, Isle of Man, Jersey, Liechtenstein, Monaco and Turkmenistan), based on the OECD TIEA Model, providing for mechanisms for the exchange of information on request.

Multilateral Competent Authority Agreements ("MCAA")

Italy is a party, inter alia, to the following MCAAs:

- for the automatic exchange of information on financial accounts (CRS);
- for the automatic exchange of Country-by-Country Reportings (CbCRs);
- for the automatic exchange of GloBE information.

OECD-Council of Europe Multilateral Convention on Mutual Administrative Assistance ("MAAT")

Italy is also a party to the MAAT, which contains provisions on the exchange of information, simultaneous tax examinations, tax examinations abroad, assistance in the recovery of tax claims and assistance in the service of documents.

EU Directives on Administrative Cooperation ("DAC")

Italy has implemented all the so-called DACs, allowing the automatic exchange of information with EU Member States and third countries on the following topics:

- employed income, pensions, directors' fees, license fees, income from real estate and life insurance products (DAC 1);
- banking information (DAC 2);
- advance tax rulings and transfer pricing rulings (DAC 3);
- country-by-country reporting (DAC 4);
- cross-border arrangements (DAC 6);
- digital platforms operations (DAC 7); and
- crypto-assets (DAC 8).

7.2 Exchange of Information Clauses in Tax Agreements

See **8.1 Availability and Legal Basis**.

7.3 Other Forms of International Tax Collaboration

Italy has been a party to the OECD ICAP since 2018. However, no ICAP case has been addressed.

Italy has also concluded, pursuant to Article 26 of the OECD Model, 12 Working Arrangements to conduct simultaneous tax examinations (with Australia, Austria, Belgium, Denmark, Finland, France, Hungary, Norway, Poland, Slovakia, Sweden and the United States).

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Italy has implemented both the OECD-based MAP programme ("Treaty MAPs") and the European ones ("EU MAP").

Treaty MAPs are specifically regulated by the relevant provision of the applicable DTC (generally Article 25).

EU MAPs are governed by two main legal instruments. The first is the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC, known as the "Arbitration Convention"), which applies exclusively to double taxation arising from transfer pricing adjustments. The second is Directive (EU) 1852/2017 on Tax Dispute Resolution Mechanisms in the European Union, implemented in Italy by Legislative Decree No 49/2020. This Directive covers both transfer pricing adjustments and other issues connected with the interpretation and application of the relevant DTCs.

8.2 Application Deadlines

The deadline for submitting a MAP request is specifically set out in the legal instrument on the basis of which the procedure is activated.

For Treaty MAPs, the term usually included in the Italian DTCs is two years, which is shorter than the three-year term set out in the OECD Model. For EU MAPs, the term is also three years.

The term generally runs from the first notification of the measure that results in (or is capable of resulting in) double taxation. Such a moment corresponds to:

- the date of the explicit or implicit denial of the refund request by the Italian Revenue Agency, in case double taxation originates from the application of a domestic tax or withholding tax; and
- the notification of the tax assessment notice, in case of adjustments made by the Italian Revenue Agency following a tax assessment.

In the latter case, according to the clarifications released by the Italian Revenue Agency (Circular Letter No 21/2012), taxpayers may also activate MAP even before the formal notification of a tax assessment notice; for example, following the notification of a final tax audit report ("processo verbale di constatazione" or "PVC").

8.3 Mandatory Binding Arbitration

Generally, Italian DTCs do not contain an arbitration clause. Only specific conventions include an arbitration provision (ie, those with Armenia, Canada, Chile, Colombia, Croatia, Georgia, Ghana, Hong Kong, Jamaica, Jordan, Kazakhstan, Lebanon, Moldova, Slovenia, Uganda, United States, Uruguay and Uzbekistan), which however could not be considered as mandatory, generally requiring the consent of both States and of the taxpayers for the start of the arbitration.

Mandatory binding arbitration is provided for EU MAPs under both the Arbitration Convention and Directive (EU) 2017/1852.

9. Dispute Prevention

9.1 Advance Pricing Agreements

9.1 Advance Pricing Agreements

In accordance with the OECD TP Guidelines, Italy introduced an APA programme in 2003 for the advance determination of transfer pricing over a specified period.

The APA programme allows the conclusion of both unilateral and bilateral (or multilateral) APA. The procedure for concluding APAs is governed by Article 31-ter of the Presidential Decree No 600/1973, as implemented by the provisions of the Regulations of the Director of the Italian Revenue Agency No 42295/2016 and No 297428/2021.

In addition to the advance determination of transfer prices, enterprises with an international activity may also conclude agreements with the Italian Revenue Agency on the basis of Article 31-ter of the Presidential Decree No 600/1973, in order to obtain the advance:

- definition of the entry or exit value of assets in case of transfer of residence;
- assessment of the conditions for the existence of a PE in Italy of a non-resident company;

- definition of the attribution of profits/losses to an Italian PE of a non-resident company or to a PE in another State of a resident company;
- assessment of the tax treatment of income (ie, dividends, interest, royalties and other income) paid to/received from non-resident companies.

9.2 Other Mechanisms

The Italian tax system offers a wide range of instruments to obtain advance certainty regarding the application of specific tax provisions or tax regimes. Those instruments are available to all taxpayers (whether Italian or foreign residents) for both purely domestic and cross-border matters.

Ordinary Tax Rulings

The ordinary tax ruling programme provides, in relation to actual cases, certainty on:

- interpretation of the tax law ("interpretative ruling");
- qualification of specific cases in relation to the applicable tax provisions ("qualification ruling");
- whether a specific transaction could be considered abusive (see **6.2 Criminal Penalties**) ("anti-abuse ruling");
- disapplication of specific anti-avoidance rules ("disapplication ruling");
- existence of the conditions required by the law for the application of specific tax regimes ("probatory ruling");
- existence of the conditions required by the law for the application of the flat tax regime for new resident individuals (Article 24-bis of the ITC).

A probatory ruling can be requested only by taxpayers under the cooperative compliance regime or by those who have already applied for the new investments ruling.

Since 2024, filing a ruling request has, in principle, been subject to a fee. As of today, absent any implementing rules, no fee is required.

Depending on the domicile, nature and size of the applicant taxpayer, the ruling request is processed by either the central bodies or by the competent Regional Directorate of the Italian Revenue Agency.

An answer to the ruling request must be provided within 90 days, with the possibility of extending the term by a further 60 days in the event of a request for additional information or documentation. If the Italian Revenue Agency does not answer within the prescribed term, the ruling request is considered confirmed.

The ruling binds both the Italian Tax Authorities and the specific taxpayers(s), provided the relevant laws, facts and circumstances remain as represented.

"New Investments" Ruling

Taxpayers can apply for the new investments ruling in relation to intended new investments that have the following characteristics:

- be realised in the Italian territory;
- have a value of at least EUR15 million;
- have a beneficial and long-lasting impact on employment and tax revenues.

The new investment ruling provides advanced certainty on the tax regime applicable to the overall investment, covering both matters normally covered by ordinary tax rulings and more factual issues (eg, existence of a PE in Italy).

The answer to the new investments ruling request must be provided within 120 days, with the possibility of extending the term by a further 90 days in the event of a request for additional information or documentation.

The ruling binds both the Italian Tax Authorities and the specific taxpayers(s) with respect to the specific business plan described in the ruling request, provided the relevant laws, facts and circumstances represented remain as stated.

Taxpayers who invest in accordance with a new investment ruling have facilitated access, regardless of their turnover, to the cooperative compliance regime.

Cooperative Compliance Programme

In 2015, Italy has implemented a cooperative compliance regime, in line with the OECD standards, allowing groups and companies, with turnover/revenues of

at least EUR500 million (EUR100 million from 2028), to establish an ongoing dialogue with the competent offices of the Italian Revenue Agency, aimed at providing taxpayers with facilitated instruments to obtain certainty on possible issues related to the interpretation and application of tax provisions as well as eligibility for specific tax regimes.

The most relevant facilitations consist of:

- reduced term for obtaining an advance answer from the Italian Revenue Agency to ruling requests (45 days, instead of the ordinary 90 days); and
- at certain conditions, no/reduced penalties in case of challenges by the Italian Revenue Agency;
- under certain conditions, no criminal liability for the offence of incorrect tax return; and
- reduced statute of limitation for tax audits (three years, instead of the ordinary five years).

Taxpayers adhering to the cooperative compliance regime must have an effective integrated system for identifying, measuring, managing and controlling tax risks, including those arising from the application of accounting principles ("Tax Control Framework" or "TCF").

Trends and Developments

Contributed by:
Giuliano Foglia
Foglia & Partners

Foglia & Partners is a boutique firm specialised in tax advisory in all main areas of domestic and international tax law. Established in 2016, based on the specialist skills, experience and strong client focus of its team of professionals, the firm is a landmark in tax advisory, particularly with respect to extraordinary transactions, corporate, financial and real estate taxation, as well as to HNWI and wealth management, transfer pricing and tax litigation. Foglia & Partners stands out for its specialised approach and assistance of the highest professional and human standing, supporting clients in the most complex strategic and management decisions as well as in day-to-day business. The high level of service provided and the continuous pursuit of excellence have enabled the Firm to achieve numerous awards and recognitions in Italy and abroad.

Author



Giuliano Foglia is the founding and name partner of Foglia & Partners. He holds a degree in economics and business administration and is a chartered accountant and statutory auditor. Giuliano previously served as a partner at a leading Italian law firm and developed extensive expertise within top-tier tax advisory firms. Throughout his career, he has supported major domestic companies and multinational groups on corporate taxation and complex regulatory matters. He has also advised high-net-worth individuals and private clients, providing assistance on personal taxation, wealth structuring and cross-border planning. His practice includes succession planning and wealth management, helping families preserve, optimise and transfer assets across generations through a strategic, integrated approach.

Foglia & Partners

Via Flaminia 141, 00196, Rome
Largo Schuster 1, 20122, Milan
Via Maggio 7, 50125, Florence

Tel: +39 06 68300655
Email: segreteria@fptax.it
Web: www.fogliandpartners.com

Italy is currently involved in implementing the major tax reform outlined in the Delegation Law No 111/2023, which authorised the Government to revise extensive parts of the Italian tax system and rationalise existing legislative provisions (including the preparation of recast and consolidated tax acts).

Moreover, Italy has continued to implement the new legislation in line with the latest developments in the international and European contexts. In particular, within the framework of the amendments to the international aspects, Italy has implemented, effective from 1 January 2024, Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU, according to the solutions adopted in the so-called OECD Pillar Two.

The relevant amendments have often been accompanied by public consultations on draft legislation and/or related administrative guidelines, offering tax experts and practitioners the opportunity to contribute to the drafting and interpretation of the new rules.

Moreover, it should be noted that, in recent years, the administrative practice of the Italian Tax Authorities has been consolidated, with the publication of the answers to ruling requests and more extensive circular letters on the most important new pieces of legislation.

The above aspects have contributed to Italy's renewed attractiveness as an investment hub. That has been incentivised by the Italian Government through the introduction of several favourable tax regimes for both individuals and companies. Such attractiveness is also strengthened by the availability of a wide range of advance ruling procedures to obtain advance certainty on tax matters and by a cooperative tax regime for companies that offers several benefits to taxpayers.

Measure to Attract Individuals

Since 2010, Italy has progressively introduced several beneficial tax regimes, with the aim of attracting human and financial capital to Italy and, ultimately, promoting inward investment.

Notwithstanding the various amendments over the years, these attractive regimes have proven very successful and have been confirmed by the Italian Government as stable features of the Italian tax regime.

Flat tax regime for new resident individuals ("Flat Tax Regime")

If Italy has become one of the favourite destinations for wealthy individuals wishing to relocate to Europe, most of its tax attractiveness stems from the Flat Tax Regime, in effect since 1 January 2017, with the specific aim of encouraging HNWIs to move to Italy.

The regime has proven to be very appealing and effective, fostered by an open and tax-friendly approach towards cases of people applying for the tax regime by the Italian Tax Authorities, and stable over the time, with only two changes due to the increase of the amount of the flat tax to EUR200,000 and, currently, EUR300,000 (EUR50,000 for each family member to whom the option is extended).

The regime is available to Italian, EU and non-EU citizens who cumulatively meet the following conditions:

- transfer their tax residence to Italy; and
- not having been tax resident in Italy for at least nine of the ten years preceding the first tax period for which the regime applies.

The option for the regime can be extended to family members (ie, spouses, children, parents, siblings, children-in-law and parents-in-law) who meet the eligibility requirements, upon payment of an additional annual flat tax of EUR50,000 for each of them.

The election for the Flat Tax Regime is made in the tax return for the relevant year, after payment of the flat tax. Before the election, taxpayers who wish to apply for the Flat Tax Regime can file a ruling request with the Italian Revenue Agency to obtain confirmation of eligibility requirements and the application of the regime to specific income items.

Upon payment of the flat tax, under the Flat Tax Regime, electing taxpayers are not subject to any further taxation on any foreign-sourced income (with the sole exception of capital gains from substantial

shareholdings realised within the first five years from the transfer of residence to Italy). Moreover, the following additional benefits apply:

- with regard to successions opened and gifts made during the validity of the regime for the deceased or donor, inheritance and gift tax do not apply in relation to assets and rights located outside Italy at the time of the succession or gift;
- no obligation to report the ownership of assets, investments and rights held outside Italy in the tax return applies, except for the holding of substantial shareholdings in foreign companies during the first five years from the transfer of residence to Italy; and
- an exemption from the wealth taxes due on real estate assets and financial products held outside Italy applies.

According to clarifications issued by the Italian Tax Authorities, individuals opting for the Flat Tax Regime are considered residents of Italy for the purposes of the double taxation conventions concluded by Italy. It follows that all electing individuals are entitled to receive an Italian tax residence certificate for tax treaty purposes. However, the actual entitlement to the benefits of the double taxation conventions needs to be verified on a case-by-case basis, taking into consideration the approach of the other contracting State (ie, the source State).

Special tax regime for inpatriates ("Inpatriates Regime")

The regime was originally introduced in 2015, with effect from 2016, and has been deeply modified over the years, finding its latest form in 2013, with effect from 2014. It has been conceived as a permanent measure to increase the internationalisation of Italian companies and to promote the Italian economy, culture and technological developments by attracting different categories of taxpayers, regardless of their nationality, who move to Italy to carry out a working activity therein and has proven to be particularly attractive for (still) active individuals who relocate to Italy.

It currently provides, for a period of five years, a 50% exemption (60% in the case of workers with underage children) on employment income (within the annual threshold of EUR600,000 of taxable income) derived from any employment activities carried out in Italy. The remaining 50% is fully taxable under ordinary tax rules.

The Inpatriates Regime applies to workers who meet the following cumulative conditions:

- move their tax residence to Italy;
- commit to maintain their tax residence in Italy for at least four years;
- have not been resident in Italy in the three tax periods preceding the year of the transfer of residence (increased to six or seven tax periods, in case the working activity in Italy is under a working agreement with the previous employer or with other entities belonging to the same group);
- carry on their working activity mainly in Italy; and
- meet the requirement of "highly qualified and specialised" (ie, university degree and working activities in a specifically identified industry).

The Inpatriates Regime can also apply to artistic and professional activities. However, the benefit deriving from the application of the Inpatriate Regime to self-employment income is subject to the so-called de minimis regime established by EU Regulation No 1407 of 18 December 2013.

Special tax regime for researchers and teachers

The special tax regime for researchers and teachers was introduced in 2010, with effect from the 2011 tax period. Originally created as a temporary measure, it has been made permanent to attract researchers and university lecturers to Italy, regardless of their nationality.

Pursuant to such a regime, 90% of the remuneration received by researchers and lecturers is exempt (ie, the remaining 10% is ordinarily taxed as income from employment or self-employment). Other income not covered by the regime, including income from a foreign source, is subject to standard personal income tax.

Special tax regime for pensioners

The regime was introduced in 2019 to foster the relocation of foreign-based pensioners to the small Municipalities of the Southern Regions of Italy and, thus, promote investments and consumption in those specific areas.

Electing taxpayers are subject to a 7% annual substitute tax on non-Italian-sourced income of any type.

Similarly to the Flat Tax Regime, an exemption from the obligation to report foreign assets, investments and rights on the income tax return, as well as from the payment of IVIE and IVAFE, is also provided.

Measures to attract corporations

Italy offers a wide range of favourable regimes and measures for corporations and entities that are also of interest to foreign investors willing to invest in Italy.

Incentives for R&D investments

A tax credit, whose amount (ranging from 5% to 20%) depends on the type of investments made, is established for the following R&D activities:

- research and development;
- technological innovation; and
- other innovative activities (such as design and aesthetic conception).

Eligible enterprises must comply with several stringent requirements (eg, certification of accounting, a certified technical report on the R&D activities performed, notification to the Ministry of Enterprises and Made in Italy).

The tax credit can only be offset against other taxes and social security contributions.

Patent box regime

The current patent box regime, as reshaped in 2021, provides for an increase in deductible research and development costs for specific intangible assets.

In particular, the patent box regime allows:

- a 110% increase in the expenses incurred in carrying out research and development activities aimed at maintaining, enhancing, protecting, and increasing the value of eligible intangible assets; and
- the recovery, starting from the tax period in which an eligible intangible asset obtains industrial property rights, of the higher deduction on the 110% increase of research and development expenses that contributed to its creation incurred in the preceding eight years.

Hyper-depreciation incentive

Investments made in the period 2026-2028 in relation to certain new tangible and intangible capital goods are eligible for the so-called hyper-depreciation incentive.

The incentive consists of a notional increase in the acquisition cost of the assets, relevant exclusively for calculating tax depreciation quotas and finance lease instalments deductible from the taxable base.

The applicable increase varies depending on the amount invested and can range from 50% to 180%.

Single ZES (Special Economic Zone) tax credit

Since 2024, a tax credit, whose amount varies depending on the Italian region, the size of the enterprise and the amount of the investment made, is granted to enterprises, already operating or establishing in the Single ZES (including all the Regions of the South of Italy and other specifically designated geographic areas), that carry out eligible investments.

In particular, eligible investments are (provided that they are part of an initial investment project) those involving:

- the purchase, including through finance lease agreements, of new machinery, plants, and equipment intended for existing production facilities or those to be established in the Single ZES; or
- the purchase of land and the acquisition, construction, or expansion of real estate assets are instrumental to the investments (the value of land and buildings may not exceed 50% of the total value of the eligible investment).

Incentives for innovative start-up companies

Ad hoc provisions are provided to foster investments in innovative start-up companies engaged in genuinely innovative activities or projects and meeting a minimum threshold of research and development expenditures.

In particular, individuals and entities that invest in start-up companies can deduct a portion of their investments from their taxable income. Moreover, capital gains realised by individuals on participations held in start-up companies are exempt.

Reshoring regime

Within the broader framework of the Italian tax reform, the Italian Government has introduced a favourable regime aimed at fostering the transfer to Italy of economic activities carried out in non-EU/EEA countries (so-called "Reshoring"), providing for a five-year (10-year, in the case of large enterprises) 50% tax deduction on the income deriving from the economic activities transferred to the Italian territory.

The effectiveness of the regime is suspended, subject to the (still pending) authorisation by the EU Commission.

Advance Certainty

The Italian tax system offers foreign-resident investors (both individuals and entities) a wide variety of instruments to seek advance certainty on the interpretation and application of specific tax regimes and provisions.

Ordinary tax rulings

The ordinary tax ruling programme provides certainty, in relation to actual cases described by the taxpayers, on:

- interpretation of the tax law ("interpretative ruling");
- qualification of specific cases in relation to the applicable tax provisions ("qualification ruling");
- whether a specific transaction could be considered abusive ("anti-abuse ruling");
- disapplication of specific anti-avoidance rules ("disapplication ruling");
- existence of the conditions required by the law for the application of specific tax regimes ("probatory ruling"); and
- existence of the conditions required by the law for the application of the Flat Tax Regime.

A probatory ruling can only be requested by taxpayers under the cooperative compliance regime or by taxpayers that have already applied for the new investments ruling.

Since 2024, filing a ruling request has, in principle, been subject to a fee. As of today, absent any implementing rules, no fee is required.

Depending on the domicile, nature and size of the applicant taxpayer, the ruling request is processed by either the central bodies or by the competent Regional Directorate of the Italian Revenue Agency.

An answer to the ruling request must be provided within 90 days, with the possibility of extending the term by an additional 60 days if a request for additional information or documentation is made. If the Italian Revenue Agency does not answer within the prescribed term, the ruling request is considered confirmed.

The ruling binds both the Italian Tax Authorities and the specific taxpayers(s), provided the relevant laws, facts and circumstances remain as represented.

"New investments" ruling

The Italian system also provides a specific instrument for foreign investors seeking investment opportunities in Italy. In particular, taxpayers can apply for the new investments ruling in relation to intended new investments that have the following characteristics:

- be realised in the Italian territory;
- have a value of at least EUR15 million; and
- have a beneficial and long-lasting impact on employment and tax revenues.

The new investment ruling provides advance certainty on the tax regime applicable to the overall investment, covering both matters normally covered by ordinary tax rulings and more factual issues (eg, existence of a permanent establishment in Italy).

The answer to the new investments ruling request must be provided within 120 days, with the possibility to extend the term by a further 90 days in case of a request for additional information and documentation.

The ruling binds both the Italian Tax Authorities and the specific taxpayers(s) with respect to the specific business plan described in the ruling request, provided the relevant laws, facts and circumstances represented remain as stated.

Taxpayers who invest in accordance with a new investment ruling have facilitated access, regardless of their turnover, to the cooperative compliance regime.

Other instruments

Companies with "international activity" may access the international ruling procedure referred to in Article 31-ter of Presidential Decree No 600/73 in order to enter into an advance agreement with the tax authority concerning the determination of transfer pricing, the transfer of residence, the attribution of profits or losses to a permanent establishment, or the payment of dividends, interest, and royalties.

In particular, the eligible enterprises are those engaged in "international activity," namely companies resident in the territory of the State which, alternatively or jointly:

- are, with respect to non-resident companies, in one or more of the conditions that trigger the application of transfer pricing rules;
- have assets, funds, or capital held by non-resident entities, or hold an interest in the assets, funds, or capital of non-resident entities;
- have paid to, or received from, non-resident entities dividends, interest, royalties, or other income components; and
- carry out their activity through a permanent establishment in another State.

The scope of advance agreements may cover:

- the prior definition, also through mutual agreement with the Tax Authority, of the methods for determining the arm's length value of transfer prices (ie, unilateral and bilateral (or multilateral) APAs);
- the prior definition, through mutual agreement, of exit or entry values in the case of a transfer of tax residence abroad or into Italy;
- the application, to a specific case, of rules, including those of treaty origin, concerning the attribution of profits and losses to the foreign permanent establishment of a resident enterprise or entity, or to the permanent establishment in Italy of a non-resident entity;
- the application, to a specific case, of rules, including those of treaty origin, concerning the payment or receipt of dividends, interest, royalties, and other incomes to or from non-resident entities; and
- the prior assessment of whether the requirements for the existence of a permanent establishment in the territory of the State are met.

Cooperative compliance programme

Since 2015, Italy has implemented a cooperative compliance regime, in line with the OECD standards, allowing groups and companies, with turnover/revenues of at least EUR500 million (EUR100 million from 2028), to establish an ongoing dialogue with the competent offices of the Italian Revenue Agency, aimed at providing taxpayers with facilitated instruments to obtain certainty on possible issues related to the interpretation and application of tax provisions as well as eligibility for specific tax regimes.

The most relevant facilitations consist of:

- reduced term for obtaining an advance answer from the Italian Revenue Agency to ruling requests (45 days, instead of the ordinary 90 days); and
- under certain conditions, no/reduced penalties in case of challenges by the Italian Revenue Agency;
- under certain conditions, no criminal liability for the offence of incorrect tax return; and
- reduced statute of limitation for tax audits (three years, instead of the ordinary five years).

Taxpayers adhering to the cooperative compliance regime must have an effective integrated system for identifying, measuring, managing and controlling tax risks, including those arising from the application of accounting principles (so-called "Tax Control Framework" or "TCF").

Tax Assessment Trends

The Italian Tax Authorities have always been very active in scrutinising foreign investment – especially the investments made by entities and corporations.

One of the areas of greatest attention in any foreign investment transaction is the tax treatment of income flows (whether dividends, interest or royalties). In this respect, Italian Tax Authorities have always adopted a very strict approach, challenging the application of the benefits of both EU Directives and double tax conventions, with specific regard to the existence of beneficial ownership and/or substance in the foreign entity receiving the income. Italian Tax Authorities may challenge the tax regime applied by the taxpayer on outbound income streams under the Italian GAAR or through the ordinary tax assessment procedure.

Very recently, new legislation and case law have strengthened the taxpayer's position in similar audits. In particular:

- an exemption for dividends paid to and capital gains realised by EU/EEA investment funds:
  - (a) which are compliant with Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ("UCITS Directive"); or
  - (b) whose fund manager is subject to regulatory supervision in the country of establishment according to Directive 2011/61/EU on alternative investment fund managers ("AIFM Directive");
- the Italian participation exemption regime (95% exemption) has been extended, under the same conditions, to EU/EEA resident entities, mitigating the exposure of the entities resident in States without a bilateral convention ensuring the exclusive resident State taxation;
- the Italian Supreme Court has recently clarified that the existence of the subjective requirements (ie, being an EU/EEA bank and insurance company or a white-list country supervised institutional investor) for the application of the withholding tax exemption on interest for medium-long term loans granted to Italian enterprises should be assessed in the hands of the actual beneficial owner of the income to be identified with a look though approach (see Decision No 4427/2025), making possible to apply the exemption in case of loans obtained abroad and channelled to Italy through other non-resident group companies.

Notwithstanding the above, the claims of the Italian Tax Authorities are frequent and continue to represent an issue for multinational groups investing in Italy.

Further sensitive areas for multinational groups having an interest in Italy are transfer pricing and hidden permanent establishment issues.

JAPAN

Law and Practice

Contributed by:
Yutaka Shimoo
Anderson Mōri & Tomotsune



Contents

1. Sources and Principles p.238
1.1 Domestic Sources of International Tax Law p.238
1.2 Hierarchy of Sources p.238
1.3 OECD Model/United Nations Influence on Treaty Practice p.238
1.4 Multilateral Instrument p.238

2. Territoriality, Residence and Permanent Establishment p.238
2.1 General Principle of Territorial Taxation p.238
2.2 Tax Residence of Individuals p.238
2.3 Taxation of Resident Individuals p.238
2.4 Taxation of Non-Resident Individuals p.239
2.5 Tax Residence of Legal Entities p.239
2.6 Definition of Permanent Establishment p.239

3. Taxation of Cross-Border Income p.240
3.1 Income From Immovable Property p.240
3.2 Business Profits p.240
3.3 Passive Income p.240
3.4 Capital Gains p.241
3.5 Employment Income p.241
3.6 Other Income p.242

4. OECD/G20 Global Tax Reform p.242
4.1 Pillar One – Amount B p.242
4.2 Pillar One – Amount A p.242
4.3 Pillar Two p.242
4.4 Specific Features or Deviations of Pillar Two p.242
4.5 Digital Services Tax p.242

5. Anti-Avoidance and Anti-Evasion Measures p.243
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.243
5.2 Anti-Avoidance Mechanisms p.243
5.3 Blacklists and Non-Cooperative Jurisdictions p.243
5.4 Reporting Obligations and Disclosure Regimes p.243
5.5 Role of Tax Authorities and Enforcement Measures p.243

6. Penalties and Sanctions p.244
6.1 Tax Penalties p.244
6.2 Criminal Penalties p.244
6.3 Interaction Between Tax and Criminal Procedures p.245

7. Administrative Co-Operation p.245
7.1 Legal Framework for Administrative Co-Operation p.245
7.2 Exchange of Information Clauses in Tax Agreements p.245
7.3 Other Forms of International Tax Collaboration p.245

8. Mutual Agreement Procedures and Arbitration p.245
8.1 Availability and Legal Basis p.245
8.2 Application Deadlines p.245
8.3 Mandatory Binding Arbitration p.245

9. Dispute Prevention p.245
9.1 Advance Pricing Agreements p.245
9.2 Other Mechanisms p.246

Anderson Mōri & Tomotsune is a full-service law firm with more than 700 professionals, which is best known for serving overseas companies doing business in Japan since the early 1950s. The team's combined expertise enables it to deliver comprehensive advice on all legal issues that may arise in the course of a corporate transaction (including those related to M&A, finance, capital markets and restructuring/insolvency) and litigation/arbitration. Most Anderson Mōri & Tomotsune lawyers are bilingual and experienced in communicating, drafting and negotiating across borders and around the globe. The firm's main office in Tokyo is supported by offices in Osaka, Nagoya, Beijing, Shanghai, Singapore, Hanoi, Ho Chi Minh City, Bangkok, Jakarta, Hong Kong, London and Brussels.

Author



Yutaka Shimoo is a partner at Anderson Mōri & Tomotsune who principally focuses on tax, wealth management and dispute resolution. With regard to tax and wealth management, Yutaka provides advice from both a legal and a tax perspective, drawing on his extensive work experience as a lawyer and his experience as an officer with the Tokyo Regional Taxation Bureau. His strength is particularly evident in the areas where legal and tax matters intersect with each other, such as global incentives and capital policies, and he combines this with broad experience of cross-border transactions. Yutaka has also actively worked on tax issues related to digital assets such as cryptocurrencies and NFTs.

Anderson Mōri & Tomotsune

Otemachi Park Building
1-1-1 Otemachi
Chiyoda-ku
Tokyo 100-8136
Japan

Tel: +81-3-6775-1000
Web: www.amt-law.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Both domestic tax laws and the applicable tax treaties are the main sources of international tax law in Japan.

Since Article 84 of the Japanese Constitution states the principle of no taxation except by law, all taxation is calculated according to domestic tax laws such as the Income Tax Act (Act No 33 of 1965), the Corporation Tax Act (Act No 34 of 1965), the Inheritance Tax Act (Act No 73 of 1950), the Consumption Tax Act (Act No 108 of 1988) and the Act on Special Measures Concerning Taxation (Act No 26 of 1957).

In addition, treaties are generally superior to domestic laws, and the applicable tax treaties override domestic rules (Article 98 paragraph 2 of the Japanese Constitution).

However, domestic tax laws have adjustment provisions, and the provision of the applicable tax treaties is not a direct source of taxation.

In addition, while tax administrative guidance works as an interpretation of domestic tax law and such guidance is significant in practice, it is not a direct source of taxation.

With regard to treaty networks, as of 1 February 2026, Japan had concluded 90 tax treaties, applicable in 157 jurisdictions, designed to avoid double taxation, prevent tax evasion and foster the exchange of information and assistance in the collection of taxes.

1.2 Hierarchy of Sources

The direct source of taxation is domestic tax law.

However, since treaties are superior to domestic laws, according to Article 98 paragraph 2 of the Japanese Constitution, the applicable tax treaties override domestic tax rules, especially regarding tax-resident status and the source rules.

1.3 OECD Model/United Nations Influence on Treaty Practice

Tax treaties executed by the government of Japan generally follow the OECD Model Convention. There is no significant difference between the OECD model and most of the actual tax treaties.

1.4 Multilateral Instrument

The Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting came into effect in January 2019. As of 12 November 2025, Japan had adopted most of this treaty and had selected 43 jurisdictions as applicable areas.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Domestic tax laws apply across Japan. However, it is generally interpreted that any distinctions made by foreign governments or international organisations related to questions of public interest are excluded from the area where domestic tax laws apply.

There are no areas to which special tax rules apply territorially within Japan.

2.2 Tax Residence of Individuals

Under domestic tax laws, an individual tax resident means an individual having a residence in Japan, or having a dwelling place (a temporary place to stay) in Japan for no less than one year.

However, domestic rules on the tax residence of individuals may be overridden by the rules of the applicable tax treaties, especially where an individual is deemed to be a tax resident in several jurisdictions.

2.3 Taxation of Resident Individuals

Residents are generally subject to income tax on worldwide income.

However, with regard to residents who do not have Japanese nationality and have had a residence or a dwelling place in Japan for a period not exceeding five years in the most recent decade (non-permanent

residents), the taxable income is limited to (i) income other than foreign-sourced income; and (ii) foreign-sourced income that is paid in Japan or transmitted from abroad.

2.4 Taxation of Non-Resident Individuals

Non-residents are subject to income tax only on domestic-sourced income.

Under the domestic tax law, domestic-sourced income includes the following types of income:

- business income derived from a permanent establishment (PE) in Japan;
- income from the utilisation or holding of assets located in Japan (excluding as stated below);
- income from the transfer of certain types of assets located in Japan (including shares of Japanese corporations in certain situations but excluding income from the transfer of real estate (including leasehold of land) in Japan);
- distribution of profit from a partnership which has a PE in Japan;
- income from the transfer of real estate (including leasehold of land) in Japan;
- consideration for the provision of personal services carried out in Japan;
- rentals from real property, ships and aeroplanes located/registered in Japan;
- interest on bonds or debentures;
- dividends paid by Japanese corporations or investment trusts in Japan;
- interest on loans paid by business operators engaging in Japan;
- royalties from intellectual property in Japan/rentals from movables in Japan;
- wages or compensation in consideration of services carried out in Japan;
- awards received from sales promotional activities;
- annuities from life insurance policies; and
- distribution of profits from a silent partnership (*tokumei kumiai*).

Domestic source rules may be overridden by applicable tax treaties.

2.5 Tax Residence of Legal Entities

Domestic corporation means a corporation that has its head office or principal office in Japan.

The location of a head office or principal office is determined not by the place of management and control, but by corporate registration. Accordingly, in substance, residence is determined by the governing laws of incorporation.

2.6 Definition of Permanent Establishment

Japanese tax law provides the following three types of PEs that are consistent with the OECD Model Tax Convention. A service-type PE is not included in the definition of a PE.

Types of Permanent Establishment

Branch type

A branch, factory, or any other fixed place located in Japan is deemed to be a PE, provided, however, that a "representative office" is not considered to be a PE because it conducts only secondary operations, such as information gathering or market research.

Construction-work type

A place in Japan in which a foreign corporation carries out any construction work or supervises a construction work effort for more than one year is deemed to be a PE.

Agent type

An agent of a foreign corporation in Japan who is habitually authorised to execute an agreement, or to conduct significant aspects of contract negotiations, is deemed to be a PE unless the agent is an "independent agent". An independent agent is one that provides, as part of its ordinary business, certain services to foreign companies.

Exclusions and Priority

Any type of business base mentioned above which has a preparatory or auxiliary nature is excluded from being a PE.

In addition, tax treaties generally override provisions in domestic tax laws that may be contrary to the treaties, so the specific concept of a PE contained in a tax treaty will apply with priority. However, the basic

concepts of PEs remain unchanged under most applicable tax treaties.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Tax Treatment

Individual residents

Any income from immovable property such as a rental fee is generally subject to income tax at a progressive tax rate, the maximum rate of which is 55.945% (including 10% local tax).

Corporate residents

Any income from immovable property such as a rental fee is subject to corporate income tax at approximately 30–35% of the flat tax rate (including local tax).

Individual and corporate non-residents

Non-residents are generally subject to withholding on any income from immovable property which is categorised as domestic-sourced income.

However, if a non-resident has a PE in Japan and the income is attributable to this PE, the non-resident is required to report this income. In addition, where that immovable property is real estate or certain types of assets in Japan, non-residents are required to report their income from that immovable property regardless of whether they have a PE, or not.

Such reported income is generally taxed in the same way as it would be for residents.

3.2 Business Profits

Individual Residents

Any business income is generally subject to income tax at a progressive tax rate, the maximum rate of which is 55.945% (including 10% local tax).

Corporate Residents

Any business income is subject to corporate income tax at approximately 30–35% of the flat tax rate (including local tax).

Individual and Corporate Non-Residents

If a non-resident has a PE in Japan and the business income is attributable to the PE, the non-resident is required to report this income. Such reported income is generally taxed in the same way as it would be for residents.

In the absence of a PE, business profits are non-taxable unless these profits are categorised as other types of domestic-sourced income that triggers tax reporting or withholding at the time of payment in Japan.

3.3 Passive Income

Individual Residents

Passive income is generally subject to income tax at a progressive tax rate, the maximum rate of which is 55.945% (including 10% local tax). Passive income is generally subject to withholding tax and the withheld amount is credited in the calculation of the tax amount in the tax reporting.

However, as an exception, regarding dividends or interests derived from some types of listed securities in a special securities account, an individual taxpayer can select taxation (i) only by withholding at a flat tax rate of 20.315%; or (ii) by separate reporting (plus withholding) at the progressive tax rate or at 20.315% of the flat tax rate, except where the taxpayer is a large shareholder. In addition, interests derived from bank deposits or some types of bonds in Japan are generally only subject to withholding in practice.

Corporate Residents

Any passive income is subject to corporate income tax at approximately 30–35% of the flat tax rate (including local tax). In addition, dividends and interests are generally subject to withholding tax and the withheld amount is credited in the calculation of the tax amount in the tax reporting.

Individual and Corporate Non-Residents

If a non-resident has a PE in Japan and the passive income is attributable to the PE, the non-resident is required to report this income. Such reported income is generally taxed in the same way as it would be for residents.

In the absence of a PE, passive income paid from Japan is generally subject to withholding tax at 20.42% or 15.315%. Such withholding tax may be exempted or reduced by applicable tax treaties.

3.4 Capital Gains

Individual Residents

Any capital gain is generally subject to income tax at the progressive tax rate, the maximum rate of which is 55.945% (including 10% local tax). With some exceptions, only half of capital gain is taxed if a taxpayer has held the asset for more than five years.

However, capital gains derived from some types of securities, such as shares, are subject to separate reporting at 20.315% of the flat tax rate. In addition, regarding capital gains derived from some types of listed securities in a special securities account, an individual taxpayer can select taxation (i) only by withholding at a flat tax rate of 20.315%; or (ii) by separate reporting (plus withholding).

Furthermore, capital gains derived from real estate (held for more than five years) are subject to separate reporting at 20.315%, or 39.63% of the flat tax rate.

Corporate Residents

Any passive income is subject to corporate income tax at approximately 30–35% of the flat tax rate (including local tax). In addition, dividends and interests are generally subject to withholding tax and the withheld amount is credited in the calculation of the tax amount in tax reporting.

Individual and Corporate Non-Residents

If a non-resident has a PE in Japan and capital gains are attributable to the PE, the non-resident is required to report this income. Such reported income is generally taxed in the same way as it would be for residents.

In the absence of a PE, capital gains derived from some types of assets, such as Japanese real estate or equities meeting some requirements, are taxed as domestic-sourced income.

With regard to capital gains derived from equities (ie, shares or interests), non-residents are briefly subject to taxation in the following cases:

25/5 rules

- If the transferor, including its "closely related parties" as defined under Japanese tax law, held 25% or more of the issued equity of the target company established in Japan at any time during the year of transfer or the two preceding years; and
- If the transferor (including its closely related parties) transfers 5% or more of the issued equity within the same year.

Real property-related company requirements

- If the target company qualifies as a real property-related company (a company whose real estate holdings in Japan or shares in another real property-related company constitute at least 50% of its total gross assets at any point during the 365-day period preceding the transfer); and
- If the transferor (including its closely related parties) held more than 2% of the issued equity of the target company (or more than 5% if the target is a listed company) as of the day immediately preceding the year of transfer.

However, these requirements, especially the "25/5 rules" may be exempt under applicable tax treaties. In addition, a foreign investor investing in Japanese assets through some types of limited investment partnerships (LPs) may benefit from PE and capital gain exemption if the statutory requirements are met.

3.5 Employment Income

Individual residents are generally subject to income tax at the progressive tax rate, the maximum rate of which is 55.945% (including 10% local tax). If (i) employment earnings of a permanent resident or a non-permanent resident who has submitted a certain application do not exceed JPY20 million per year; and (ii) other income required for the reporting does not exceed JPY200,000, such an employee will only be subject to withholding tax and need not report. Instead, the employer will be responsible for the calculation and payment of the employees' taxes. This system, especially the year-end recalculation procedure of the system, is called the "year-end adjustment system" (*nenmatsu chousei*) of tax payment.

On the other hand, a non-resident is generally only subject to withholding taxes of 20.42% on their salary

paid in Japan. The amount of employment income is generally limited to that income attributable to work physically executed in Japan. However, if a non-resident is an executive of a Japanese corporation, the salary paid by the Japanese subsidiary will be categorised as domestic-sourced income regardless of the executive's actual workplace.

In addition, if a non-resident employee (generally excluding an executive of a Japanese corporation) meets all the following requirements, the non-resident would generally be exempt from taxation in Japan under the applicable tax treaties:

- the individual's stay in Japan does not exceed 183 days per year;
- the individual's salary is paid by a foreign corporation; and
- no domestic Japanese corporation is responsible for paying any part of the individual's salary.

3.6 Other Income

The tax treatment of cross-border income in Japan is generally consistent with the OECD Model Convention. Accordingly, there is no specific type of income not listed above that is subject to special taxation rules in Japan.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

The National Tax Agency of Japan (NTA) has announced that a simplified and streamlined approach to taxation will not be implemented for the time being. Based on this, the NTA prepared an FAQ titled "Simplified and Streamlined Approach (FAQ)" summarising the Japanese tax treatment of this approach in June 2025.

4.2 Pillar One – Amount A

In Japan, the framework for Pillar One has not yet been fully developed. However, discussions are ongoing in alignment with the OECD framework.

4.3 Pillar Two

A global minimum tax system has been introduced. Specifically, at the first introduction, an Income Inclusion Rule (IIR) was introduced and became applicable to the business year of all corporations starting on or after 1 April 2024. In addition, the Undertaxed Profits Rule (UTPR) and Qualified Domestic Minimum Top-up Tax (QDMTT) have been introduced and are applicable to the business year of corporations starting on or after 1 April 2026.

4.4 Specific Features or Deviations of Pillar Two

Japanese legislation on Pillar Two is consistent with the OECD framework.

Specifically, these rules apply to the ultimate parent corporation of a multinational corporate group, the consolidated revenue of which is equivalent to no less than EUR750 million in two or more business accounting years in the four most recent consolidated business accounting years. In addition, there are transitional safe harbours according to the content of country-by-country (CbC) reporting – for example, a de minimis test, simplified effective tax rate test, and a routine profits test.

4.5 Digital Services Tax

The earnings of digital services provided by foreign business operators are subject to Consumption Tax, which is equivalent to VAT if the service recipient is located in Japan.

Specifically, where the digital service by foreign business operators is a business-to-consumer (B-to-C) business, such business operators are generally required to report and pay Consumption Tax. Exceptionally, if the digital service is provided through the specified platforms designated by the NTA and the consideration thereof is collected by the specified platforms, the specified platforms are subject to Consumption Tax, instead of the foreign business operators (first type of platform taxation).

On the other hand, in cases where a digital service by foreign business operators is a business-to-business (B-to-B) business, the service recipient is subject to Consumption Tax, instead of the foreign business operators (reverse charge mechanism).

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Under domestic tax laws, tax fraud/evasion and tax avoidance are generally understood as follows:

- Tax fraud/evasion: any wilful concealment, in whole or in part, of the non-fulfilment of any taxation requirement.
- Tax avoidance: any abnormal or irregular action taken to reduce tax burden that is not contemplated by the tax laws (an abuse of tax laws).

With regard to tax avoidance, whether anti-general avoidance rules apply would be determined by comprehensive circumstance.

For example, with regard to general avoidance rules applicable to family-owned corporations that are often applied by the NTA, whether any given act or calculation is deemed as unjustified would be determined under the following criteria:

- whether the series of transactions is unusual, for example, the parties use unusual procedures or methods of transactions that would not normally be conducted between unrelated parties, or they use a legal form of transactions that is different from the actual intended economic result of the transactions; and
- whether there is any business purpose or other commercial reason to execute the transaction, other than a mitigation of tax burden.

In addition, with regard to "abuse of tax law" rules which restrict general tax benefit on the taxpayers, a Supreme Court decision dated 19 December 2005, restricted the use of a foreign tax credit on the grounds that the structure in question mitigated taxes by using a foreign tax credit system in a manner that deviated significantly from its intended purpose, and thus prejudiced the resulting tax burden in a way that was unfair. Accordingly, whether a given act by a taxpayer prejudices the fairness of the intended tax burden may be the ultimate criterion used for determining the presence of tax avoidance.

5.2 Anti-Avoidance Mechanisms

Tax fraud and tax evasion are generally subject to criminal penalties, in addition to tax dispositions.

With regard to tax avoidance, Japanese tax laws have general anti-avoidance rules such as the disallowance of acts or calculations:

- by family-owned corporations;
- in relation to organisational restructuring;
- by corporate groups of the group calculation framework; and
- regarding foreign entity profits that are attributable to a permanent establishment.

Other than these, according to the abuse of tax law rules, tax benefits such as foreign tax credit may be restricted if the actual use of such tax benefits is deemed as abuse of tax law.

5.3 Blacklists and Non-Cooperative Jurisdictions

Currently, there is no list of non-cooperative or high-risk jurisdictions.

5.4 Reporting Obligations and Disclosure Regimes

No direct reporting obligations exist in Japan in order to detect and prevent tax fraud, tax evasion and/or tax avoidance. Currently, no reporting obligation of tax planning is required for tax professionals.

However, the Japanese tax authorities collect information that is strategically sensitive for the detection of tax fraud/evasion or tax avoidance, based on tax reporting and statutory reports required under domestic tax law.

5.5 Role of Tax Authorities and Enforcement Measures

The NTA is responsible for the enforcement of national tax law. Specifically, the 12 regional tax bureaus and 524 tax offices under the supervision of the NTA are authorised to impose and collect taxes based on individual addresses or corporate registered offices.

Tax audits by the NTA are generally conducted on a non-compulsory basis. In this case, tax auditors usually visit the office of taxpayers and check book records or evidence thereof. However, unannounced visits or tax audits for the counterparty of the transactions may be made, depending on the attitude of taxpayers or the complexity of the transactions.

In addition, compulsory investigations may be carried out in cases of tax fraud or tax evasion. A criminal investigation group from the regional tax bureau is generally responsible for compulsory investigations.

6. Penalties and Sanctions

6.1 Tax Penalties

As a general rule, in cases where a taxpayer fails to report their taxes or fails to pay the tax amount by the due date, the following penalties are levied on such taxpayers.

- Underreporting: the additional tax is 10% of the difference between the unreported and reported taxes (the "reporting difference") plus 5% of the difference between the reporting difference and the larger of JPY500,000 or the reported tax.
- Failure to file a tax return: the additional tax is 15% of the unreported tax plus 5% of the difference between the unreported tax and JPY500,000.
- Failure to pay withholding tax: the additional tax is 10% of the unpaid amount.

If a taxpayer files a tax return with the correct tax amount (after filing an earlier erroneous tax return) without having predicted a disposition by the tax authority, additional tax is reduced or not imposed according to the situation of the taxpayer.

On the other hand, for tax evasion, the rate of additional tax as a penalty is increased to 35% (in the case of underreported tax or non-payment of withholding tax), or 40% (in the case of non-filing).

In addition, late payment charges are levied on the taxpayer until payment.

The rate of additional tax on unpaid tax is: 7.3% per annum for the period up to the due date or the period up to the day by which two months will have elapsed since the day following the due date; and 14.6% thereafter until the date payment is completed. However, under the current rule, the 7.3% and 14.6% rates are reduced respectively to: 1% plus a certain rate based on the average rate of banks' new short-term loans; and 7.3% plus the certain rate.

Regarding cross-border transactions, there is no specific tax penalty that is only applicable to cross-border transactions. However, if a taxpayer is required to submit a foreign assets report, whether the assets were already reported in the foreign assets report would affect the rate of additional tax.

6.2 Criminal Penalties

In case of tax fraud/evasion where, for example, a taxpayer intentionally fails to file returns to pay the tax amount, criminal penalties may be imposed on the taxpayer.

Specifically, in brief, criminal penalties are levied in the following cases:

- tax fraud/evasion offender – this offender's behaviour includes deliberate:
  - (a) underreporting;
  - (b) claiming a tax refund;
  - (c) non-reporting; or
  - (d) non-payment of withholding tax; and
- tax obligation offender – this offender's behaviour includes deliberate:
  - (a) late reporting without reasonable reason;
  - (b) submission of false records or non-submission; or
  - (c) obstruction of a tax obligation.

The scale of penalties differs according to the scale of the offence. However, as a general rule, an individual taxpayer or executive of a corporate taxpayer is sentenced to imprisonment and/or a fine, and a corporate taxpayer also bears fines that run parallel to any individual criminal penalties. For example, where a taxpayer is prosecuted for corporate tax fraud/evasion, the statutory penalty is imprisonment for up to ten years and/or a fine of up to JPY10 million. In addition,

if the evaded tax amount exceeds JPY10 million, the fine may be more than JPY10 million, but less than the evaded tax amount.

6.3 Interaction Between Tax and Criminal Procedures

In the case of tax fraud or tax evasion, a criminal investigation group from the regional tax bureau investigates the taxpayer and files a criminal complaint to the prosecutor. Based on this criminal complaint, the prosecutor decides whether to prosecute the taxpayer, and the judge renders judgement under the relevant criminal provisions.

Parallel to any criminal procedure, unless the taxpayer voluntarily files an amended tax return and pays the amount due, the NTA will issue a disposition to determine the tax amount to be paid by the taxpayer.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Many tax treaties executed by the NTA have relevant provisions with regard to administrative co-operation, including regarding the exchange of information and co-operation with the tax collection authorities.

In addition, based on the OECD's Base Erosion and Profit Shifting (BEPS) project, the NTA has jurisdiction over the administration of the Multilateral Instrument (MLI) to implement tax treaty measures related to preventing BEPS, which will come into effect on 1 January 2029.

7.2 Exchange of Information Clauses in Tax Agreements

By an automatic exchange mechanism, the NTA exchanges:

- the financial account information collected according to the Common Reporting Standard (CRS);
- information on Country-by-Country Reporting (CbCR) based on the BEPS project; and
- information collected by statutory reports.

In addition, the NTA provides foreign tax authorities with information about taxpayers, either voluntarily or at the request of foreign tax authorities.

Furthermore, under the Crypto-Asset Reporting Framework (CARF), the NTA started collecting information on crypto-transactions at the beginning of 2026 and will exchange this information with foreign tax authorities.

7.3 Other Forms of International Tax Collaboration

The NTA has joined the OECD's International Compliance Assurance Programme (ICAP).

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

According to the applicable tax treaty, the NTA will execute a mutual agreement procedure (MAP) if a taxpayer who is deemed to be a dual resident is taxed in a way that is inconsistent with the provisions of a tax treaty, in order to mitigate double taxation or adjustment of transfer pricing.

8.2 Application Deadlines

A taxpayer is generally required to submit a MAP request within three years of the first disposition. However, the actual deadline differs according to the applicable tax treaty.

8.3 Mandatory Binding Arbitration

Under many tax treaties executed by the NTA, mandatory binding arbitration is generally available if a MAP ends in failure.

9. Dispute Prevention

9.1 Advance Pricing Agreements

In Japan, three types of advance pricing agreement (APA) are available:

- unilateral APA (an APA only with the Japanese tax authorities);

- bilateral APA (an APA with a MAP between two jurisdictions); and
- multilateral APA (an APA with a MAP among three or more jurisdictions).

A unilateral APA is based on the Commissioner's Directive on the Operation of Transfer Pricing. On the other hand, the other two types are based on the applicable tax treaties.

According to the announcement on APA statistics, during the period from 1 July 2024 to 30 June 2025, the NTA accepted 280 MAP requests and 194 of these requests were regarding an APA. The announcement also stated that an APA takes an average of 42.4 months until settlement.

9.2 Other Mechanisms

Under Japanese tax practice, with regard to international tax matters, a taxpayer can generally confirm a tax position by either:

- a written response to an advanced tax query; or
- a consultation with the relevant tax department/office regarding the specific transaction.

In addition, if the taxpayer is a large enterprise under the jurisdiction of the Special Examiner in the First Large Enterprise Examination Group of the Tokyo Regional Tax Bureau, such taxpayer can confirm their tax position through the Compliance Assurance Programme of Japan ("J-CAP regime").

In these programmes, responses given or comments made by the NTA are not legally binding. However, as these comments have a de facto binding effect on the NTA unless the underlying facts differ from those submitted by the taxpayer, many taxpayers apply for participation in these programmes.

Trends and Developments

Contributed by:
Yutaka Shimoo
Anderson Mōri & Tomotsune

Anderson Mōri & Tomotsune is a full-service law firm with more than 700 professionals, which is best known for serving overseas companies doing business in Japan since the early 1950s. The team's combined expertise enables it to deliver comprehensive advice on all legal issues that may arise in the course of a corporate transaction (including those related to M&A, finance, capital markets and restructuring/insolvency) and litigation/arbitration. Most Anderson Mōri & Tomotsune lawyers are bilingual and experienced in communicating, drafting and negotiating across borders and around the globe. The firm's main office in Tokyo is supported by offices in Osaka, Nagoya, Beijing, Shanghai, Singapore, Hanoi, Ho Chi Minh City, Bangkok, Jakarta, Hong Kong, London and Brussels.

Author



Yutaka Shimoo is a partner at Anderson Mōri & Tomotsune who principally focuses on tax, wealth management and dispute resolution. With regard to tax and wealth management, Yutaka provides advice from both a legal and a tax perspective, drawing on his extensive work experience as a lawyer and his experience as an officer with the Tokyo Regional Taxation Bureau. His strength is particularly evident in the areas where legal and tax matters intersect with each other, such as global incentives and capital policies, and he combines this with broad experience of cross-border transactions. Yutaka has also actively worked on tax issues related to digital assets such as cryptocurrencies and NFTs.

Anderson Mōri & Tomotsune

Otemachi Park Building
1-1-1 Otemachi
Chiyoda-ku
Tokyo 100-8136
Japan

Tel: +81-3-6775-1000
Web: www.amt-law.com

Recent Trends in Japan's Controlled Foreign Company Rules

Japan's Controlled Foreign Company Rules (the "CFC Rules" or "CFCR") require that certain Japanese tax residents (both individuals and corporations, collectively "Japanese Residents") include in their own taxable income all or part of the income of a foreign corporation they control, particularly where that foreign corporation is located in a low-tax jurisdiction (ie, where the effective tax rate is low).

Since their introduction in 1978, the CFC Rules have been one of the most significant topics in Japanese tax practice. In particular, following the 2019 tax reform, which substantially revised the CFC regime, the rules have become more complex and have led to an increase in disputes between the Japanese tax authorities and taxpayers.

Outline of the CFC Rules

As a general principle, the CFC Rules may apply where:

- a foreign corporation is "controlled" by Japanese Residents (including, but not limited to, a taxpayer who is a Japanese Resident); and
- the taxpayer holds at least 10% of the issued shares or voting rights of that controlled foreign company (CFC), or otherwise has de facto control over the CFC.

Whether a foreign corporation is treated as a CFC is determined based on one or more of the following criteria:

- the majority of the issued shares or equity interests are held, directly or indirectly, by Japanese Residents;
- the majority of the voting rights are held, directly or indirectly, by Japanese Residents; or
- Japanese Residents have de facto control over the foreign corporation, taking into account not only rights to residual assets and any contracts or agreements governing the disposition of those assets, but also other equivalent circumstances.

Scope of income included

If the CFC Rules apply, all or part of the income of the CFC is generally included in the Japanese taxpayer's income in proportion to the taxpayer's ownership or control ratio (eg, the ratio of shares held to total issued shares).

As an exception, where the effective tax rate of the CFC is less than 20% (or less than 27% in the case of a shell company), specific exemption or inclusion rules may apply under the regime.

Furthermore, if a CFC (other than a shell corporation) satisfies all of the requirements below, then (as a general rule) only "passive income" (such as dividends and interest) is included, rather than the CFC's full income:

Business requirement

The principal business of the CFC is not primarily any of the following –

- holding shares (excluding certain supervisory or management-type activities);
- licensing or otherwise exploiting intellectual property; or
- leasing ships or aircraft.

Substance (physical presence) requirement

The CFC has the physical presence (personnel, office and other facilities) necessary to conduct its principal business in the jurisdiction where its head office is located.

Management and control requirement

The CFC actually manages, controls and operates its business in the jurisdiction where its head office is located.

Non-related party requirement or jurisdiction requirement

Either –

- the CFC mainly engages in transactions with non-related parties (in the case of certain specified business types such as leasing, banking, trust, financial instruments, insurance, water transport, air transport, or aircraft leasing); or

- the CFC conducts its business primarily in the jurisdiction where its head office is located.

In addition to the above, there are further detailed rules that apply depending on the type of business and the character of the CFC's income.

Recent case trends

Because CFCs are governed by foreign law, disputes often arise where the Japanese tax authorities attempt to apply the CFC Rules to foreign entities whose legal form differs materially from a Japanese corporation.

For example, the Tokyo District Court decision dated 12 September 2025 (the "TDC Decision") considered whether a taxpayer should be treated as a quasi-shareholder of a foundation established under Liechtenstein law. The court indicated that, in order to be treated as having shareholder status, beneficiaries must have made a contribution and, as a result of that contribution, obtained rights reflecting both:

- personal economic interests (eg, the right to distributions or residual assets); and
- elements of collective governance (eg, voting rights or rights to participate in management).

On the other hand, the Tokyo High Court decision dated 14 April 2026 overturned the TDC decision. In practical terms, if the Supreme Court justified the tax disposition in this court case, it could support arguments that certain foreign non-equity entities may still be treated as being within the scope of the CFC Rules, and that a broad range of factors may be considered when assessing whether Japanese Residents have a controlling relationship.

As another example, a tax tribunal decision dated 1 November 2024 addressed how to assess control over a US limited liability company (LLC) under the CFC Rules. The relevant legislation describes the control relationship for foreign corporations by reference to either the "amount" of investment or the "number" of investment units.

In the situation where a taxpayer in this case would receive a more favourable tax outcome if they were indirectly holding at least 25% of total investments in the LLC, the taxpayer argued that they should be able to use the "number" of investment units for the control assessment by the wording of the relevant legislation, even if their share measured by investment amount was less than 25%.

The tribunal stated that the "number" of investment units can be used only where each unit is structured as a uniformly subdivided fractional unit (ie, each unit is economically equivalent). The reasoning is generally understood as reflecting the approach taken to Japanese membership-type entities where each unit tends to represent the same bundle of rights from both (i) the economic interest perspective, and (ii) the governance/participation perspective.

In light of these cases, careful analysis of the legal and economic structure of the foreign entity is increasingly important when assessing the application of the CFC Rules.

Trends in Cross-Border Digital Services

Corporate income tax: introduction of the Global Anti-Base Erosion Rules (Pillar Two) in Japan

As discussed in the OECD/G20 BEPS 2.0 project, increased digitalisation allows many foreign business operators to provide services to customers in Japan through online channels without a physical presence or a permanent establishment in Japan.

Against this background, Japan introduced a global minimum tax regime through the 2023 and 2025 tax reforms. Japan's rules are aligned with the Pillar Two framework and are designed to ensure an effective tax rate of at least 15% on the income of multinational enterprise (MNE) groups with consolidated annual revenue of at least EUR750 million.

Japan's global minimum tax regime consists primarily of three components:

- the Income Inclusion Rule (IIR);
- the Undertaxed Profits Rule (UTPR); and
- the Qualified Domestic Minimum Top-up Tax (QDMTT).

By contrast, Pillar One has not been implemented in Japan at this time.

Consumption tax: platform taxation for cross-border digital services and imports

In Japanese practice, the importance of platform taxation for Consumption Tax is increasing.

Consumption Tax is Japan's value-added tax (VAT). It is imposed on:

- consideration for sales or leases of assets carried out in Japan, and consideration for services supplied in Japan; and
- imports of goods.

Platform taxation is intended to shift certain Consumption Tax compliance obligations from foreign suppliers to platform operators.

Platform taxation on digital services (first type of platform taxation)

This regime applies where:

- digital services are provided by foreign business operators through a "specified platform operator" designated by the National Tax Agency (NTA); and
- the consideration for the digital services is collected by that specified platform operator.

As a general rule, consideration for digitally supplied services is subject to Consumption Tax if the service recipient is located in Japan. For cross-border digital services:

- for B-to-C (business-to-consumer) services, foreign suppliers are generally required to file and pay Consumption Tax themselves; and
- for B-to-B (business-to-business) services, the Japanese recipient generally accounts for the tax under the reverse charge mechanism.

In practice, because digital services can be provided without a physical presence in Japan, some foreign B-to-C suppliers have failed to register, report and pay Consumption Tax.

To address this, platform taxation for B-to-C digital services was introduced from 1 April 2025. Under this regime, specified platform operators designated by the NTA must file and pay Consumption Tax in respect of B-to-C digital services supplied by foreign operators through the platform and collected by the platform operator. Economically, this typically shifts the tax collection burden onto the platform operator (and, in practice, the cost may be reflected in platform fees or contractual allocation).

Platform taxation on low-value imports (second type of platform taxation)

Under prior rules, goods dispatched to Japan from abroad via mail order could be exempt from import Consumption Tax where the value per parcel was JPY10,000 or less (referred to as "specified small-value transactions").

Under the 2026 tax reform, these small-value import transactions will become subject to import Consumption Tax (ie, they will be removed from the exemption).

In addition, where the aggregate amount of taxable sales of goods by foreign business operators through a digital platform; and taxable sales of specified small-value import transactions through that platform, exceeds JPY5 billion (including Consumption Tax), then the platform provider managing that digital platform may become responsible for paying the Consumption Tax for those specified small-value import transactions under the second type of platform taxation rules.

These reforms are scheduled to take effect on 1 April 2028 and it is expected that they will have a significant impact on foreign business operators that sell goods into Japan via cross-border e-commerce channels.

Trends in Cross-Border Succession: Inheritance Tax and Gift Tax

Under Japanese tax law, an individual who receives assets by inheritance or bequest is generally subject to Japanese inheritance tax. Similarly, a recipient of assets by gift is generally subject to Japanese gift tax.

Both inheritance tax and gift tax are asset-based taxes imposed on the net fair market value of assets transferred between individuals without consideration. The maximum tax rate is 55%.

The scope of taxable assets depends on multiple factors, including:

- the tax residency status of the transferor and recipient;
- the nationality of the transferor and recipient; and
- the location of the transferred assets.

Notably, even where both the transferor and recipient are foreign nationals living outside Japan, transfers of assets located in Japan may still be subject to Japanese inheritance tax or gift tax, depending on the structure of the transfer.

In addition, where a transferor has been a Japanese tax resident for more than five years in the preceding ten years, certain transfers of securities or unsettled derivatives to a recipient living outside Japan may trigger "exit tax" treatment. This is an individual income tax imposed on a deemed capital gain, currently taxed at a flat rate of 15.315%.

Recently, the Japanese tax authorities have strengthened enforcement of inheritance tax and gift tax, particularly in relation to HNW individuals. As a result, foreign individuals who intend to live in Japan for an extended period should pay careful attention to inheritance and gift tax exposure and planning.

2026 Tax Reform: Changes to Permanent Establishment (PE) Exemption Requirements for Foreign Investors

Where a limited partner invests in Japan through certain types of investment limited partnerships (LPs), the limited partner may qualify for a PE exemption if the following requirements are satisfied:

(i) the limited partner's interest in the partnership property is less than 25%;
(ii) the limited partner does not act as an executive of the LP;
(iii) the limited partner does not have a special relationship with the general partner; and
(iv) the limited partner would not have any income attributable to a permanent establishment if the business were not conducted through a permanent establishment under the investment partnership agreement governing the LP.

Under the 2026 tax reform, amendments will be introduced to relax certain PE exemption requirements, including:

- the threshold in item (i) will be relaxed from "less than 25%" to "less than 50%" for LPs that have established certain committees consisting of limited partners;
- regarding item (ii), approvals by the general partner relating to conflict-of-interest transactions will be more broadly excluded from the scope of "business execution" (and therefore more likely to jeopardise PE exemption); and
- regarding item (iv), a limited partner may still benefit from the PE exemption for investments through an LP even if the taxpayer has income attributable to other permanent establishments.

KAZAKHSTAN



Law and Practice

Contributed by:
Assel Ilyassova, Lyazzat Zhilkibagarova and Makhabbat Mukhidinkyzy
GRATA International

Contents

1. Sources and Principles p.254
1.1 Domestic Sources of International Tax Law p.254
1.2 Hierarchy of Sources p.254
1.3 OECD Model/United Nations Influence on Treaty Practice p.254
1.4 Multilateral Instrument p.254

2. Territoriality, Residence and Permanent Establishment p.254
2.1 General Principle of Territorial Taxation p.254
2.2 Tax Residence of Individuals p.254
2.3 Taxation of Resident Individuals p.254
2.4 Taxation of Non-Resident Individuals p.255
2.5 Tax Residence of Legal Entities p.255
2.6 Definition of Permanent Establishment p.255

3. Taxation of Cross-Border Income p.255
3.1 Income From Immovable Property p.255
3.2 Business Profits p.255
3.3 Passive Income p.256
3.4 Capital Gains p.256
3.5 Employment Income p.256
3.6 Other Income p.256

4. OECD/G20 Global Tax Reform p.256
4.1 Pillar One – Amount B p.256
4.2 Pillar One – Amount A p.256
4.3 Pillar Two p.256
4.4 Specific Features or Deviations of Pillar Two p.256
4.5 Digital Services Tax p.256

5. Anti-Avoidance and Anti-Evasion Measures p.257
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.257
5.2 Anti-Avoidance Mechanisms p.257
5.3 Blacklists and Non-Cooperative Jurisdictions p.257
5.4 Reporting Obligations and Disclosure Regimes p.257
5.5 Role of Tax Authorities and Enforcement Measures p.257

6. Penalties and Sanctions p.258
6.1 Tax Penalties p.258
6.2 Criminal Penalties p.258
6.3 Interaction Between Tax and Criminal Procedures p.258

7. Administrative Co-Operation p.258
7.1 Legal Framework for Administrative Co-Operation p.258
7.2 Exchange of Information Clauses in Tax Agreements p.258
7.3 Other Forms of International Tax Collaboration p.258

8. Mutual Agreement Procedures and Arbitration p.258
8.1 Availability and Legal Basis p.258
8.2 Application Deadlines p.258
8.3 Mandatory Binding Arbitration p.258

9. Dispute Prevention p.259
9.1 Advance Pricing Agreements p.259
9.2 Other Mechanisms p.259

GRATA International has a Tax and Customs practice in Kazakhstan that comprises a team of six lawyers and is supported by the firm's regional network, including offices in Almaty, Astana, Atyrau and Aktau. The team advises on tax structuring, international taxation, tax audits and disputes, and works closely with the Corporate, M&A, Finance, Labour and Subsoil Use practices on cross-border and sector-specific projects. Recent matters include advising: an Islamic bank on Murabaha financing; a Spanish construction company on tax and customs issues relating to an SEZ plant project; a Chinese bank on the tax implications of loans in Kazakhstan; and a large Kazakh retail business on the carve-out and sale of one of its business segments within the AIFC. The team also represented shareholders of a uranium mining enterprise in a dividend withholding tax dispute under the Kazakhstan-UK tax treaty and the MLI, as well as a Chinese oil service company in court proceedings, achieving the partial cancellation of VAT assessments and the reinstatement of tax.

Authors



Assel Ilyassova is a partner and head of Tax and Customs at GRATA International in Kazakhstan. Over the course of her career with the firm, she has progressed professionally from associate to partner. She specialises in tax structuring, international taxation, tax disputes and customs matters, including cross-border projects, complex tax audits and disputes. She is a member of the Chamber of Legal Consultants and a Category I Tax Adviser of the Chamber of Tax Advisers of Kazakhstan. She also serves on the Executive Team of the EUROBAK Tax Committee.



Lyazzat Zhilkibagarova is a senior associate at GRATA International in Kazakhstan. She focuses on tax law. Since joining GRATA International in September 2015, Lyazzat has advised both local and foreign companies on various tax issues. Lyazzat has a first-category qualification of Tax Consultant in the Republic of Kazakhstan.



Makhabbat Mukhidinkyzy is a junior associate in the Tax and Customs practice of GRATA International in Kazakhstan. She assists the team with the tax analysis of international financing transactions. She supports the team in legal research, including legal searches, and in the analysis of tax legislation and administrative and judicial practice in tax disputes.

GRATA International

Kazakhstan,
Almaty,
Business center "Esentai Tower",
Al-Farabi Avenue 77/7,
10th floor,
050040

Tel: +7 701 702 5111
Email: info@gratanet.com
Web: gratanet.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main sources of international tax law in Kazakhstan are the Constitution, the Tax Code, ratified international treaties, and other laws governing the conclusion, operation and application of international treaties. Normative resolutions of the Constitutional Court and the Supreme Court are also significant, as they form part of the applicable law and shape the courts' approach to the application of tax legislation and international treaties.

Although established judicial practice is taken into account in practice, judicial precedent is not formally recognised as an independent source of law in Kazakhstan. Tax administrative guidance remains limited: there are currently no specific tax authority instructions providing a comprehensive framework for the application of tax treaties, and individual clarifications issued by the tax authorities are not legally binding and may be reconsidered.

Kazakhstan has a relatively broad treaty network consisting primarily of 55 bilateral double tax treaties on income and capital gains with major jurisdictions across Europe, the CIS, Asia, the Middle East and North America. Kazakhstan is also a party to the Multilateral Instrument (MLI) and has listed 41 treaties as Covered Tax Agreements for MLI purposes.

In addition, as a member of the Eurasian Economic Union, Kazakhstan applies the Treaty on the Eurasian Economic Union, which includes rules on indirect taxes in mutual trade between member states.

1.2 Hierarchy of Sources

The current Constitution and the Tax Code establish the principle that ratified international treaties prevail over domestic legislation in the event of a conflict.

However, it should be noted that a new Constitution was adopted by nationwide referendum on 15 March 2026 and will enter into force on 1 July 2026. This principle is not expressly reflected in the new Constitution. The entry into force of the new Constitution is expected to result in corresponding amendments to various codes and other legislative acts of the Republic of Kazakhstan.

1.3 OECD Model/United Nations Influence on Treaty Practice

Kazakhstan's jurisdiction does not strictly follow a single model. Tax treaties are generally based on the OECD Model Tax Convention, while incorporating certain elements of the UN Model.

1.4 Multilateral Instrument

Kazakhstan signed the MLI on 25 June 2018 and ratified it on 20 February 2020.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Kazakhstan applies the principle of worldwide taxation to its tax residents, under which residents are taxed on their global income. Non-residents, in contrast, are subject to tax only on income derived from sources in Kazakhstan.

2.2 Tax Residence of Individuals

An individual is generally recognised as a tax resident of Kazakhstan if either of the following tests is met:

- *Physical presence test:* the individual is present in Kazakhstan for 183 calendar days or more in any consecutive 12-month period ending in the relevant tax period; or
- *Centre of vital interests test:* the individual's centre of vital interests is deemed to be in Kazakhstan where the relevant statutory conditions are met, including the individual's citizenship or residence status, the residence in Kazakhstan of the individual's spouse and/or close relatives, and the availability of residential property in Kazakhstan for the individual or such family members.

2.3 Taxation of Resident Individuals

Tax-resident individuals in Kazakhstan are generally subject to personal income tax on their worldwide income, ie, income derived both from sources in Kazakhstan and from foreign sources. Personal

income tax is generally imposed at the standard rate of 10% for most categories of individual income.

To mitigate double taxation of foreign-source income, Kazakhstan provides relief through a foreign tax credit mechanism, subject to the conditions and limitations set out in the Tax Code.

2.4 Taxation of Non-Resident Individuals

Individuals who are not tax resident in Kazakhstan are generally taxed only on Kazakhstan-source income. Such income is typically taxed by withholding at source through a Kazakh tax agent, although in certain cases the non-resident individual may be required to report and pay the tax directly.

Kazakhstan-source income of non-resident individuals includes employment income, directors' fees, income from independent personal services, artists' and sportspersons' income, dividends, interest, royalties, capital gains from Kazakhstan immovable property and shares or participation interests, rental and other property-related income, pension and insurance-related payments, material benefits, and other income treated as Kazakhstan-source under the Tax Code.

2.5 Tax Residence of Legal Entities

A legal entity is generally recognised as a tax resident of Kazakhstan if it is either incorporated under the laws of Kazakhstan or incorporated under the laws of a foreign state but has its place of effective management in Kazakhstan.

The place of effective management is generally understood as the place where the actual governing body (such as the board of directors or a similar body) meets and where key management, control and strategic business decisions are made.

In addition, the Astana International Financial Centre (AIFC) legal framework allows foreign legal entities to redomicile to the AIFC in Kazakhstan. Following such continuation, these entities are generally treated as Kazakhstan tax residents, subject to the requirements of the Tax Code.

2.6 Definition of Permanent Establishment

In Kazakhstan, a permanent establishment (PE) is defined broadly under the Tax Code and may arise through a fixed place of business, the provision of services or performance of works through personnel, a dependent agent, or participation in joint activities. The domestic definition is generally broader than the PE definitions in Kazakhstan's tax treaties, particularly in relation to service-based activities. In addition, where a non-resident has a registered PE in Kazakhstan, Kazakhstan-source income may generally be treated as attributable to that PE unless the non-resident proves otherwise to the tax authorities, reflecting a broad domestic "force of attraction" approach.

Kazakhstan's treaty PE provisions are generally based on the OECD Model Tax Convention, although many treaties also include UN Model features, especially in relation to service PE clauses and construction-related activities.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

The tax treatment of income from immovable property differs depending on whether the seller is a resident or a non-resident. For resident legal entities, proceeds from the disposal of immovable property are generally taken into account under the Tax Code rules governing fixed assets, with the resulting amount forming part of taxable business income subject to corporate income tax at 20%. For non-residents, gains derived from the disposal of immovable property situated in Kazakhstan are generally treated as Kazakhstan-source capital gain income and taxed in Kazakhstan, through withholding income tax at source at 15%, subject to any applicable double tax treaty.

3.2 Business Profits

For non-resident legal entities operating in Kazakhstan through a PE, taxable business income is generally determined as gross annual income less deductible business expenses and other statutory adjustments. Such income is generally subject to corporate income tax at 20%, and the net income of the PE is also subject to branch profits tax at 15%. For non-residents that do not operate through a PE, the taxable base

is generally the gross amount of Kazakhstan-source income. Depending on the nature of the income, such income may be subject to withholding tax at rates ranging from 5% to 20% under the Tax Code. These tax implications may be reduced or exempted under an applicable double tax treaty.

3.3 Passive Income

Dividends, interest and royalties derived by non-residents from Kazakhstan sources are generally subject to withholding tax at a rate of 15%. This rate may be reduced, typically to 10% or 5%, under an applicable double tax treaty.

3.4 Capital Gains

Non-residents are generally subject to withholding tax at a rate of 15% on capital gains derived from sources in Kazakhstan. This includes, in particular, gains from the disposal of property located in Kazakhstan that is subject to state registration, securities issued by Kazakhstan residents, and participation interests in resident legal entities or consortia, as well as shares or participation interests in non-resident entities, where 50% or more of the value of such shares, interests or assets is derived from property located in Kazakhstan.

3.5 Employment Income

Kazakhstan-source employment income is generally subject to personal income tax at 10% on annual income up to 8,500 monthly calculation indices (MCI) and 15% on the excess. In 2026, one MCI is equal to KZT4,325. Employment income may also give rise to social tax at a general rate of 6%. Short-term assignments are not subject to a separate domestic tax regime as such, although relief may be available under an applicable double tax treaty. Remote working is not specifically regulated in the Tax Code as a standalone category, and the tax consequences are therefore assessed under the general rules.

3.6 Other Income

Overall, the categories of Kazakhstan-source income derived by non-residents are broadly consistent with internationally recognised source-based taxation principles and generally follow the structure of the OECD Model Tax Convention. A notable exception is Kazakhstan's extraterritorial approach to taxing capital gains derived by a non-resident from the disposal of shares or participation interests in a non-resident entity where 50% or more of the value is derived from the property of a Kazakhstan subsoil user.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Kazakhstan has not taken steps to implement Pillar One Amount B.

4.2 Pillar One – Amount A

Kazakhstan has not implemented Pillar One Amount A.

4.3 Pillar Two

Kazakhstan has not implemented the global minimum tax under Pillar Two.

4.4 Specific Features or Deviations of Pillar Two

Kazakhstan has not implemented the global minimum tax under Pillar Two.

4.5 Digital Services Tax

Kazakhstan has not introduced a separate digital services tax or any other standalone tax specifically targeting digital products or streaming services. Income derived from digital assets may, depending on the circumstances, be taxed under the general corporate income tax rules, but this does not amount to a separate tax on digital products as such. Instead, Kazakhstan applies a 16% VAT to certain digital services supplied by foreign companies to individuals in Kazakhstan, with foreign suppliers generally required to register for VAT once they start receiving payments from local individuals. Kazakhstan also imposes a specific digital mining fee, although this is better characterised as a sector-specific levy rather than a digital services tax.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Kazakhstan law does not contain a single legal definition of tax avoidance or abusive tax arrangements. Instead, such situations are assessed through a combination of specific legal mechanisms, including anti-abuse provisions of international tax treaties, transfer pricing rules, mechanisms for challenging fictitious transactions, and others.

Tax evasion is treated as unlawful non-compliance with tax obligations and may give rise to administrative or criminal liability for a tax agent in cases of failure to withhold or partial withholding of tax from non-resident income. Tax fraud does not have a separate unified definition and is usually addressed through general liability mechanisms applicable to unlawful evasion and fictitious transactions.

In cross-border situations, the main indicators of abuse typically include treaty shopping, lack of beneficial ownership and non-compliance with the arm's length principle.

5.2 Anti-Avoidance Mechanisms

Kazakhstan combats tax fraud, evasion and abusive practices through the following mechanisms:

- transfer pricing control over related-party and certain cross-border transactions;
- controlled foreign corporation (CFC) rules;
- thin capitalisation rules limiting interest deductibility in transactions between affiliated parties;
- beneficial ownership and principal purpose test requirements for access to double tax treaty benefits;
- restrictions on deductions for transactions lacking business purpose;
- increased tax exposure on transactions with low-tax jurisdictions; and
- challenging fictitious transactions.

5.3 Blacklists and Non-Cooperative Jurisdictions

Kazakhstan maintains an official list of jurisdictions with preferential taxation (often referred to as "low-tax" or "offshore" jurisdictions).

If Kazakh taxpayers interact with entities or individuals registered in such jurisdictions, the tax consequences may include:

- limitations on deductions;
- withholding tax implications (an increased withholding tax rate compared to the same type of income received by a foreign entity or individual not registered in a preferential jurisdiction); and
- increased scrutiny by the Kazakh tax authorities.

5.4 Reporting Obligations and Disclosure Regimes

In Kazakhstan, the key reporting obligations to detect and prevent tax fraud, tax evasion and/or tax avoidance include:

- tax returns and financial statements;
- transfer pricing documentation for controlled transactions;
- CFC reporting by residents; and
- country-by-country reporting (CbCR) for qualifying multinational groups.

5.5 Role of Tax Authorities and Enforcement Measures

Kazakh tax authorities have broad investigatory powers in relation to tax non-compliance. These include desk and field tax audits; the power to request accounting, banking and transactional records; access to taxpayer premises during audits; and information exchange with domestic and foreign authorities. They may also bring taxpayers or tax agents to administrative liability within their competence, while cases involving indications of tax crime may be referred to law enforcement authorities. Unannounced visits, searches and raids are generally conducted only in the context of criminal proceedings, with the involvement of law enforcement bodies rather than the tax authorities acting alone.

6. Penalties and Sanctions

6.1 Tax Penalties

Penalties relating to cross-border transactions in Kazakhstan are governed mainly by the Tax Code, the Code on Administrative Offences, the Criminal Code and, where relevant, customs legislation and transfer pricing rules. Administrative sanctions are generally imposed and enforced by the state revenue authorities, ie, tax and customs authorities, while cases involving possible tax crimes are referred to law enforcement authorities.

6.2 Criminal Penalties

Criminal liability applies in cases of large-scale tax evasion, including:

- substantial fines;
- restriction or deprivation of liberty;
- confiscation of property in certain cases; and
- a ban on holding certain positions in the future.

6.3 Interaction Between Tax and Criminal Procedures

Where the state revenue authorities, including the tax and customs authorities, identify indications of a tax-related criminal offence, they are required to refer the relevant materials to the competent law enforcement authorities for further investigation. In practice, referral is made to the Economic Investigation Service rather than directly to the public prosecutor. Co-ordination is then ensured through the criminal procedure framework: the state revenue authorities provide audit materials and may be involved further by assisting with additional tax or customs reviews, or by participating as witnesses or specialists, while the investigative authorities and, ultimately, the courts handle the subsequent procedural stages.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Administrative co-operation in tax matters in Kazakhstan is based primarily on international instruments. The main instruments are the Convention on Mutual Administrative Assistance in Tax Matters, the related multilateral competent authority agreements on automatic exchange of information (including the Common Reporting Standard (CRS) and CbCR), and Kazakhstan's network of bilateral double tax treaties, which typically contain exchange-of-information and mutual agreement procedure (MAP) provisions.

7.2 Exchange of Information Clauses in Tax Agreements

Kazakhstan exchanges tax information on request and automatically, and its legal framework also contemplates spontaneous exchange. Automatic exchange takes place through the relevant multilateral competent authority agreements, including the CRS and CbCR.

7.3 Other Forms of International Tax Collaboration

Kazakhstan does not participate in the OECD's International Compliance Assurance Programme, joint audits or other multilateral arrangements other than MAPs.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Kazakhstan has a MAP framework based on its network of double tax treaties.

8.2 Application Deadlines

In Kazakhstan, the deadline for submitting a MAP request depends on the relevant double tax treaty. Generally, this period is three years from the first notification of the action resulting in taxation not in accordance with the applicable treaty.

8.3 Mandatory Binding Arbitration

In Kazakhstan, mandatory binding arbitration is available only under a limited number of double tax treaties, namely those concluded with Canada, France, Italy, the Netherlands, Pakistan, Switzerland, Tajikistan and the United States.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Kazakhstan has an advance pricing agreement programme. The legal basis for the programme is the Kazakh Law on Transfer Pricing.

9.2 Other Mechanisms

Kazakhstan does not have a broad binding ruling or co-operative compliance system for international tax matters comparable to those available in some OECD jurisdictions. Tax certainty in treaty matters is available primarily through the MAP under the applicable double tax treaties. In addition, taxpayers participating in the horizontal monitoring regime may obtain preliminary explanations from the tax authorities on the application of tax legislation, including tax treaties. More generally, the tax authorities may issue individual written explanations; however, these are advisory only and are not legally binding.

LUXEMBOURG



Law and Practice

Contributed by:
Michiel Boeren, Jeronimo Charvarria, Maxime Grosjean and Gauthier Mary
Tiberghien

Contents

1. Sources and Principles p.263
1.1 Domestic Sources of International Tax Law p.263
1.2 Hierarchy of Sources p.263
1.3 OECD Model/United Nations Influence on Treaty Practice p.263
1.4 Multilateral Instrument p.263

2. Territoriality, Residence and Permanent Establishment p.263
2.1 General Principle of Territorial Taxation p.263
2.2 Tax Residence of Individuals p.263
2.3 Taxation of Resident Individuals p.264
2.4 Taxation of Non-Resident Individuals p.264
2.5 Tax Residence of Legal Entities p.265
2.6 Definition of Permanent Establishment p.265

3. Taxation of Cross-Border Income p.265
3.1 Income From Immovable Property p.265
3.2 Business Profits p.266
3.3 Passive Income p.267
3.4 Capital Gains p.268
3.5 Employment Income p.269
3.6 Other Income p.270

4. OECD/G20 Global Tax Reform p.271
4.1 Pillar One – Amount B p.271
4.2 Pillar One – Amount A p.271
4.3 Pillar Two p.271
4.4 Specific Features or Deviations of Pillar Two p.271
4.5 Digital Services Tax p.271

5. Anti-Avoidance and Anti-Evasion Measures p.271
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.271
5.2 Anti-Avoidance Mechanisms p.271
5.3 Blacklists and Non-Cooperative Jurisdictions p.272
5.4 Reporting Obligations and Disclosure Regimes p.272
5.5 Role of Tax Authorities and Enforcement Measures p.272

6. Penalties and Sanctions p.272
6.1 Tax Penalties p.272
6.2 Criminal Penalties p.272
6.3 Interaction Between Tax and Criminal Procedures p.273

7. Administrative Co-Operation p.273
7.1 Legal Framework for Administrative Co-Operation p.273
7.2 Exchange of Information Clauses in Tax Agreements p.273
7.3 Other Forms of International Tax Collaboration p.273

8. Mutual Agreement Procedures and Arbitration p.274
8.1 Availability and Legal Basis p.274
8.2 Application Deadlines p.274
8.3 Mandatory Binding Arbitration p.274

9. Dispute Prevention p.274
9.1 Advance Pricing Agreements p.274
9.2 Other Mechanisms p.274

Tiberghien is a leading independent law firm focused on taxation and family (patrimonial) law, with more than 85 years' experience and 145 lawyers across offices in Brussels, Antwerp, Ghent, Hasselt and the Grand Duchy of Luxembourg. The firm is recognised for its multidisciplinary and international approach, and for its strong in-house capabilities across tax compliance, family law, transfer pricing and valuations. It advises family-owned businesses, multinational groups, financial institutions, investment and pension funds, public bodies, non-profit organisations and private clients on complex strategic tax matters. Tiberghien Luxembourg was established in 2010 and advises international families, entrepreneurs and corporate groups on their private and professional projects. The team covers a wide range of transactions, and is particularly involved in private equity and real estate transactions, the structuring of joint ventures and strategic alliances, corporate governance, compliance matters, and duties and liabilities issues.

Authors



Michiel Boeren is a partner at Tiberghien Luxembourg and focuses on corporate tax, in both a Luxembourg and international context. He has over 20 years' experience in advising international corporate clients, financial institutions, private equity firms and high net worth individuals/families, including on direct and indirect taxation, international tax (treaty) planning and structuring cross-border transactions through Luxembourg. Michiel has experience in supervising tax audits, advising on tax planning projects, performing tax due diligence examinations and discussing Advance Tax Agreements and Advance Pricing Agreements with the Luxembourg tax authorities. He is a member of the International Fiscal Association, the International Bar Association and the American Bar Association.



Jeronimo Charvarria is a counsel at Tiberghien Luxembourg and an experienced tax and legal professional with over 20 years' experience, primarily in Luxembourg's legal, accounting and corporate services sectors. He has developed in-depth expertise in Luxembourg direct taxation, international tax planning, cross-border structuring, substance, tax and corporate governance, compliance, risk management and transfer pricing, as well as legal, regulatory and financial processes. Jeronimo has advised private equity, real estate, venture capital and infrastructure investment funds, global asset management companies, multinational corporations, financial institutions, high net worth individuals, family offices, fintechs and start-ups on the Luxembourg aspects of cross-border structures, transactions, tax issues and optimisation.



Maxime Grosjean is a senior associate at Tiberghien Luxembourg and guides a diverse international clientele on Luxembourg individual and corporate tax aspects. His practice is centred on corporate and individual tax, with a particular emphasis on the taxation and implementation of corporate restructurings. He regularly advises private clients and family businesses, managing their tax matters ranging from ongoing corporate and individual tax management to the implementation of complex reorganisations. His expertise also covers tax law relating to international mobility. Maxime delivers comprehensive solutions by integrating his tax expertise with a strong understanding of accounting, finance and Luxembourg company law.



Gauthier Mary is a senior associate at Tiberghien Luxembourg and advises Luxembourg and foreign corporate clients in their investments and operations in Luxembourg or abroad, including ICT technologies, private equity, real estate and intellectual property. He also advises private clients on their estate planning through Luxembourg, and is active in tax litigation involving Luxembourg companies. Prior to joining Tiberghien, Gauthier worked for five years in the tax department of an important Luxembourg Big Four firm and for more than six years in an important Luxembourg independent tax advisory firm, gaining significant experience in the field of corporate taxation.

Tiberghien

23, Boulevard Joseph II
LU-1840
Luxembourg

Tel: +352 27 47 51 11
Fax: +352 28 66 96 58
Email: info@tiberghien.com
Web: www.tiberghien.com

Tiberghien.
Advocaten / Avocats / Lawyers

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main sources of international tax law in Luxembourg are as follows:

- constitutional principles (eg, the principle of legality);
- EU law transposed into Luxembourg law, such as the Parent-Subsidiary Directive, the Interest and Royalties Directive and the Anti-Tax Avoidance Directives;
- tax treaties;
- domestic tax legislation (eg, the Income Tax Law);
- case law; and
- administrative guidance (eg, circular letters).

As of February 2026, Luxembourg has a comprehensive network of 88 tax treaties in force.

1.2 Hierarchy of Sources

Luxembourg adheres to the principle of treaty supremacy, whereby duly ratified and officially published international tax agreements take precedence over conflicting domestic tax legislation.

1.3 OECD Model/United Nations Influence on Treaty Practice

As a founding member state of the OECD, Luxembourg predominantly aligns its treaty policy with the OECD Model Tax Convention, with few deviations. The OECD Model and its Commentaries serve both as a reference point in treaty negotiations and as a tool for interpreting tax treaties.

Luxembourg has incorporated some aspects of the UN Model in certain tax treaties with developing countries.

1.4 Multilateral Instrument

Luxembourg signed the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 7 June 2017 and deposited the instrument of ratification with the OECD on 9 April 2019. The MLI entered into force for Luxembourg on 1 August 2019, taking effect from 2020 depending on the type of tax and whether it has also entered into force in the other contracting state.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

In Luxembourg, the territorial scope of taxation is governed by the principles of residence and source. Residents of Luxembourg, individuals and corporate entities, are subject to tax on their worldwide income, whereas non-residents are only subject to tax on income derived from Luxembourg.

Relief from double taxation is available for foreign-source income derived by Luxembourg residents through exemption or credit, as set out in applicable tax treaties or domestic law.

2.2 Tax Residence of Individuals

Under Luxembourg law, individuals are considered tax residents if they have their tax domicile or habitual abode in Luxembourg. A tax domicile is established when an individual has a dwelling at their disposal under circumstances that suggest their intention to keep and use it permanently. This standard requires the satisfaction of the following three main conditions.

- Having a dwelling available – this does not mean that the individual must own the accommodation, but merely that they have the right to use it.
- The dwelling is intended for residential use – it must be equipped in such a manner that the individual may reasonably reside therein and have at their disposal the amenities required for residential occupation, considering the specific circumstances of each taxpayer.
- With the intent to keep and use it – this implies effective, regular and continuous use, as evidenced by the actual occupation of the dwelling.

The notion of habitual abode refers to two possible distinct situations.

- A continuous stay – this criterion is usually met when an individual resides in Luxembourg on a habitual basis, irrespective of the specific duration.

- A stay exceeding six months – this applies from the date of arrival in Luxembourg. Once this threshold of 183 days is exceeded, the individual is deemed a tax resident with retroactive effect, starting from the first day of their presence in Luxembourg.

2.3 Taxation of Resident Individuals

Individuals who are considered tax residents of Luxembourg are generally subject to personal income tax on their worldwide taxable income. The system is based on a progressive tax schedule, with current effective rates reaching up to 45.78% (including the solidarity surcharge for the employment fund), and the top rate being applicable when income reaches EUR234,870 (for a single taxpayer in tax class 1).

Taxable income is determined by aggregating net income from eight distinct categories:

- trade and business income;
- income from agriculture and forestry;
- income from self-employment;
- employment income;
- pensions and annuities;
- income from movable capital;
- rental income; and
- miscellaneous income.

Taxpayers are categorised into three tax classes (1, 1a, and 2), based primarily on their marital and family status. A reform is currently under discussion to modernise the system through the introduction of a unified tax class, which would particularly benefit single taxpayers and single-parent households.

Luxembourg offers targeted relief through various mechanisms that reduce either the taxable base or the final tax due, as follows.

- Residents may significantly reduce their taxable income by claiming "special expenses". These include mandatory social security contributions, insurance premiums, interest on personal loans, and charitable donations.
- Specific credits exist to increase purchasing power, notably for employees, pensioners and single parents.

Residents benefit from Luxembourg's vast network of double taxation treaties. Foreign income that is exempt under a treaty (eg, foreign rental income) is excluded from the tax base but is considered when determining the applicable tax rate on remaining Luxembourg income (exemption with progression).

For passive income such as foreign dividends and interest that are subject to withholding tax at source, Luxembourg usually uses the credit method. This means that the foreign tax paid can be credited against the Luxembourg tax due on that income.

In Luxembourg, tax on employment and pension income sourced domestically is generally withheld at source each month via wage tax.

Even when it is not mandatory to file an income tax return, residents may choose to regularise their tax position by submitting a voluntary tax return or requesting an annual tax adjustment. This enables them to claim eligible deductions and allowances, determine their final tax liability and potentially receive a tax refund.

2.4 Taxation of Non-Resident Individuals

Individuals who are not tax residents of Luxembourg are subject to limited tax liability, and are only subject to tax on specific categories of Luxembourg-sourced income.

Certain income streams, such as dividends, directors' fees and salaries, are subject to initial tax withholding at source. For non-residents, this withholding tax is usually final. However, they may still be required to file an annual tax return if their salary or directors' fee exceeds a certain statutory threshold (such as EUR100,000), or they may choose to file in order to claim specific tax deductions.

Non-residents must file an income tax return for other types of income (eg, business profits or rental income). This income is subject to tax at the same progressive rates as for residents, but often with a minimum tax rate of 15%. Non-residents may opt to be treated as residents for tax purposes, allowing them to access the same deductions (eg, interest and insurance) and

tax classes (eg, Class 2 splitting) as residents. This option is available if:

- at least 90% of the taxpayer's worldwide income is taxable in Luxembourg; or
- the taxpayer's net income not subject to Luxembourg tax is less than EUR13,000.

A specific threshold applies to Belgian tax residents, who may qualify if more than 50% of their household's professional income is taxable in Luxembourg.

If assimilation is chosen, the non-resident will be subject to tax on their Luxembourg-sourced income at the average rate applicable to their worldwide income (exemption with progression). This regime is particularly beneficial for non-residents with high-deductible personal expenses, and for married couples with disparate incomes who wish to be jointly taxed.

2.5 Tax Residence of Legal Entities

In Luxembourg, the tax residence of collective entities, such as capital companies, is determined based on either their registered office (as stated in their formation documents) or their place of effective management (where shareholders' meetings and board meetings are held, decisions are made, the company's relevant information is stored, etc). If both are situated in Luxembourg, the tax residence is clearly established.

Companies incorporated under foreign laws but effectively managed in Luxembourg are considered Luxembourg tax residents.

Tax-transparent entities formed under Luxembourg law, such as limited partnerships (SCS) or special partnerships (SCSp), are not considered tax residents of Luxembourg.

2.6 Definition of Permanent Establishment

Under Luxembourg law, a permanent establishment (PE) is defined as any fixed local facility or installation used for the purpose of conducting ongoing business activities. Examples of PEs include branch offices, manufacturing facilities, warehouses, mines, construction sites, etc.

The domestic definition is generally broader than those in tax treaties. However, under domestic law, the criteria used to determine the existence of a foreign PE of a Luxembourg taxpayer are those set out in the applicable tax treaties, thus avoiding any conflicting interpretations.

While Luxembourg's tax treaties generally align with the OECD Model Tax Convention, including the PE provisions, some specific treaties differ.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Luxembourg Resident Individuals

Individuals who are tax residents of Luxembourg are subject to tax on their worldwide taxable income, including income derived from immovable property located in Luxembourg or abroad. Net rental income is aggregated with other taxable income and is subject to the progressive income tax schedule.

Luxembourg immovable property

Income from the rental of private property is subject to tax as net rental income. The taxable base is calculated as gross receipts minus deductible expenses (eg, interest, maintenance, depreciation and management fees).

A key feature is that buildings (excluding land) can be depreciated for tax purposes. This amortisation is generally tax-deductible and does not reduce the acquisition price for future capital gains calculations.

Foreign immovable property

If a double tax treaty applies, foreign rental income is generally exempt in Luxembourg but is subject to the exemption with progression rule. This means that, while the income itself is not subject to tax, it is included in the worldwide income base to determine the applicable tax rate on other Luxembourg-source income.

In the absence of a tax treaty, foreign rental income is fully taxable in Luxembourg. However, a foreign tax credit is usually available for taxes paid abroad to mitigate double taxation, subject to domestic limitations.

Non-Resident Individuals

Non-resident individuals are only subject to tax on income sourced in Luxembourg, including rental income from property located in Luxembourg. If a non-resident owns Luxembourg immovable property through a permanent establishment, the rental income is treated as business profits of that PE and subject to tax under standard corporate tax rules.

Luxembourg Resident Entities

Resident companies

For Luxembourg tax resident companies, income from immovable property is usually categorised as business profits and is subject to tax in accordance with standard corporate tax regulations. As such, the income is subject to corporate income tax (CIT) and municipal business tax (MBT), and the company remains subject to net wealth tax (NWT) on its net assets.

Real estate levy on Luxembourg investment funds

Luxembourg imposes a specific 20% real estate levy on certain corporate collective investment vehicles that own real estate located in Luxembourg. This levy applies to:

- specialised investment funds (SIF);
- Part II undertakings for collective investment (UCI); and
- reserved alternative investment funds (RAIF).

To fall within the scope of the levy, these vehicles must be organised in corporate form (eg, SA, SCA or Sàrl). Funds structured as SCSs, SCSp or FCPs are notably excluded from this tax.

The 20% levy applies to income derived from Luxembourg real estate, whether held directly or indirectly through tax-transparent entities, such as partnerships or FCPs. Taxable income includes:

- rental income from Luxembourg real estate properties;
- capital gains from the disposal of such properties; and
- income from the disposal of interests in tax transparent entities, provided that the value of these interests reflects the underlying Luxembourg real estate.

Non-Resident Entities

Non-resident companies without Luxembourg PEs

Non-resident companies are subject to CIT on income derived from real estate located in Luxembourg. As this income is not considered to be business profits, and in the absence of commercial activities in Luxembourg, the MBT is not usually due.

Non-resident companies with Luxembourg PEs

Where immovable properties are allocated to PEs, the income is generally classified as business income and is subject to CIT and MBT at the level of the PE.

3.2 Business Profits

Luxembourg Resident Individuals

Individuals who are Luxembourg tax residents are taxable on their worldwide business income, subject to double tax treaty provisions. Business profits are aggregated with income from other sources and are subject to tax at progressive personal income tax rates.

Individuals carrying out a commercial activity in Luxembourg are also subject to MBT. The rate varies by municipality (currently 6.75% in Luxembourg City). However, individuals benefit from an annual allowance of EUR40,000, meaning MBT is only levied on business profits exceeding this amount.

Non-Resident Individuals

Non-residents are subject to tax on business income only if it is attributable to a PE or a permanent representative located in Luxembourg. If a non-resident has a PE or permanent representative established or present in Luxembourg, the net income attributable to it is subject to tax in the same way as that of residents: it is subject to progressive income tax rates and MBT (after the EUR40,000 allowance).

In the absence of a PE or permanent representative, business profits are not subject to tax in Luxembourg.

Luxembourg Resident Entities

In accordance with the principle of commerciality by legal form, any income realised by Luxembourg capital companies (eg, SA, Sàrl) is considered as business income, regardless of its actual source or nature, unless an entity is specifically exempt from income

tax. Consequently, income is treated as business income, whether it stems from real estate, passive income, capital gains, etc.

Resident companies are subject to CIT, the solidarity surcharge and MBT on their worldwide taxable income at an aggregate rate of 23.87% (2026 rate for entities established in Luxembourg City) for taxable profits exceeding EUR200,000. Certain exemptions apply to dividend income and capital gains under the participation exemption. Luxembourg companies are also subject to NWT at a rate of 0.5% on their net wealth (subject to applicable exemptions and a lower rate for high net wealth).

Non-Resident Entities

Non-resident companies with Luxembourg PEs

If a non-resident company operates through a PE or a permanent representative creating taxable presence in Luxembourg, the PE is treated similarly to a resident commercial company regarding the income attributable to that PE. The net profits generated by the PE are considered business income and are subject to CIT and MBT; NWT is assessed on the net assets allocated to the PE.

Non-resident companies without Luxembourg PEs

In the absence of a PE or a permanent representative creating taxable presence in Luxembourg, the income does not automatically become commercial. Consequently, MBT does not apply. The non-resident is therefore subject only to CIT (the rate for 2026 is 17.12%, including surcharge).

3.3 Passive Income

Luxembourg Resident Individuals

Passive income is generally subject to progressive income tax rates, although significant tax reliefs apply.

- Dividends from qualifying companies are exempt from tax on 50% of their gross amount. If the dividend is paid by a Luxembourg company, the standard 15% domestic withholding tax is fully creditable against the final tax liability. For qualifying foreign dividends, the foreign withholding tax credit is limited to the Luxembourg tax due on that specific income, and any uncredited excess foreign tax is only partially deductible.
- Interest income paid by a Luxembourg paying agent (and certain foreign agents) to a resident individual is typically subject to a final withholding tax of 20% (RELIBI regime). Interest not covered by this regime (eg, from non-EU sources) is subject to tax at progressive rates.
- Royalties are aggregated with other taxable income and are subject to tax at progressive rates. A deduction for expenses is often permitted.

Non-Resident Individuals

Non-resident individuals are only subject to tax in Luxembourg on specific Luxembourg-source income.

- Dividends paid by Luxembourg companies are generally subject to a 15% withholding tax, which is considered the final tax liability for non-residents. While this rate may be reduced under applicable tax treaties, it is rarely reduced below 15% for individual shareholders, with a few notable exceptions, such as Singapore, where the withholding rate is reduced to 0%.
- Interest and royalties are generally exempt from withholding tax and are not subject to Luxembourg income tax, provided they are not attributable to a PE (or similar taxable presence maintained) in Luxembourg.
- Some exceptions exist for certain profit-sharing interest payments (which are treated as dividends) and royalties paid to artists and sportspeople for services performed in Luxembourg, which may trigger specific withholding taxes.

Luxembourg Resident Entities

For Luxembourg tax resident companies, passive income is subject to corporate taxation. However, under the Luxembourg participation exemption, dividends (including liquidation distributions) may be fully exempt, provided that certain cumulative conditions are met on the date of the payments, which can be summarised as follows:

- the subsidiary is covered by the EU Parent-Subsidiary Directive or is a capital company subject to an income tax comparable to the Luxembourg CIT (at least 8% if the foreign tax is compulsorily levied based on a system similar to that in Luxembourg);

- a minimum direct participation threshold of 10% in the capital or shares representing an historical acquisition price of at least EUR1.2 million is required; and
- a minimum uninterrupted holding period of one year is required.

The participation exemption also applies to Luxembourg PEs of companies covered by the EU Parent-Subsidiary Directive that are resident in the EEA or in a country with which Luxembourg has concluded a tax treaty. Certain tax treaties concluded by Luxembourg provide for more favourable conditions for the participation exemption on dividends, notably regarding the holding period requirement.

If the full domestic exemption is not available, in some cases dividend income may be 50% exempt if the subsidiary is covered by the EU Parent-Subsidiary Directive or if the subsidiary is a company that is resident in a country with which Luxembourg has concluded a tax treaty and the comparable tax test is met.

Withholding Tax

No withholding tax applies on arm's length interest and royalties paid by Luxembourg companies.

In principle, dividends (including deemed dividends) and profit-sharing interest paid by Luxembourg companies to their shareholders are subject to withholding tax at a rate of 15%. However, the withholding tax does not apply to these payments made to qualifying corporate shareholders if the following conditions are met at the date of the payments:

- the recipient is an entity covered by the EU Parent-Subsidiary Directive (or a PE thereof), an entity resident in a tax treaty country and the comparable tax test is met (or a Luxembourg PE thereof), an entity resident and subject to tax in Switzerland without benefiting from an exemption, or an entity resident and subject to tax in an EEA country and the comparable tax test is met (or a PE thereof);
- a minimum direct participation threshold of 10% in the capital or shares having an historical acquisition price of at least EUR1.2 million is required; and
- a minimum uninterrupted holding period of one year is required (or a commitment to meet this condition subsequently).

In cases where the direct shareholders are tax transparent entities from a Luxembourg perspective, a look-through approach applies to determine if the above conditions are met by corporate or individual shareholders.

If the above exemptions are not available, exemptions or reduced withholding tax rates may be available under tax treaties.

Liquidation distributions made by Luxembourg companies, including partial liquidation distributions in the context of share class buyouts, are not considered dividends and are therefore not subject to withholding tax. In addition, under the regimes applicable to securitisation vehicles, SIFs, RAIFs, Venture Capital Investment Companies (SICAR) and Family Wealth Management Companies (SPF), dividend distributions are not subject to withholding tax.

3.4 Capital Gains

Luxembourg Resident Individuals

Residents are taxable on worldwide capital gains, with treatment depending on the nature of the asset and holding period.

- Gains realised on movable assets (eg, shares) held for less than six months or real estate held for less than five years (so-called speculative gains) are subject to tax as ordinary income at progressive rates.
- Gains on real estate held for more than five years and on "substantial participations" in companies (shareholding of more than 10% held for more than six months) are subject to tax at a preferential rate equal to half the global average tax rate (maximum effective rate of approximately 22.89%).
- Residents benefit from a EUR50,000 allowance (doubled for jointly taxed couples) applicable to long-term gains every ten years.
- Capital gains on the disposal of the taxpayer's principal private residence are fully exempt from taxation.

Non-Resident Individuals

Provided there is no permanent establishment or any other taxable presence in Luxembourg, non-residents are subject to capital gains tax only on specific Luxembourg-source assets.

- For real estate situated in Luxembourg, non-residents follow the same rules as residents: speculative gains (less than five years) are subject to tax at ordinary rates, while long-term gains (more than five years) are subject to tax at half the global rate.
- Non-residents are generally exempt from capital gains tax on shares in Luxembourg companies, unless:
  (a) they hold a "substantial participation" (more than 10%) and sell the shares within six months of acquisition; or
  (b) they were resident in Luxembourg for more than 15 years and became non-resident less than five years before the gain was realised.

However, these rules do not apply to gains from shares in specific vehicles such as SPFs, SICARs or corporate UCIs, which remain exempt for non-residents regardless of the participation size.

Where a double tax treaty applies, these domestic provisions do not usually apply to gains on movable assets (shares), as the right to tax is typically allocated exclusively to the country of residence. However, specific exceptions exist; for example, under the tax treaty between Luxembourg and the Netherlands, the source country retains the right to tax these gains if the taxpayer is a former resident holding a "substantial interest" in the company.

Luxembourg Resident Entities

For Luxembourg companies, capital gains are subject to corporate taxation. However, gains realised on shares (including foreign exchange gains) may be fully exempt under the Luxembourg participation exemption, provided certain conditions are met. Such conditions are practically the same as the participation exemption for dividends, except that the acquisition price must be at least EUR6 million.

In principle, a capital gain becomes taxable up to the amount of aggregate expenses and write-downs relating to the participation, which were deducted during the year in which the exempt capital gain was realised and in previous years. However, such a capital gain can be offset against tax losses carried forward.

Some share-for-share exchanges, mergers and demergers may benefit from rollover relief if certain conditions are met.

Capital Gains Taxation of Non-Resident Entities

Provided that there is no permanent establishment or any other taxable presence in Luxembourg to which the relevant assets are allocated, non-resident entities are subject to tax on specific Luxembourg assets.

- Capital gains realised on the full or partial disposal of shares in a Luxembourg resident company are subject to corporate income tax in the hands of the shareholder if the participation represents a substantial shareholding (in broad terms, a direct participation in the capital of the company exceeding 10%) and the disposal occurs within six months after acquisition. Specific rules apply if the non-resident shareholder was a Luxembourg tax resident for more than 15 years in the past and became a non-resident less than five years prior to the disposal of such participation. However, Luxembourg's taxation rights are usually restricted under applicable tax treaties.
- For real estate located in Luxembourg, capital gains are generally classified as miscellaneous income rather than business income and are subject to Luxembourg corporate income tax.

3.5 Employment Income

Employment income is subject to progressive tax rates and includes salaries, bonuses and benefits in kind. Residents are subject to tax on their worldwide income, whereas non-residents are generally only subject to tax on income derived from professional activities performed in Luxembourg.

Employers with a presence in Luxembourg must withhold wage tax. This generally satisfies the employee's tax liability, unless they have multiple income sources or choose to file a tax return to claim specific deductions.

For short-term assignments, Luxembourg generally follows the standard 183-day rule found in most tax treaties – ie, a non-resident working in Luxembourg for less than 183 days is generally not taxable there, provided their salary is paid by a non-resident employer and not borne by a Luxembourg PE.

For cross-border workers, specific bilateral treaties apply to commuters from neighbouring countries, establishing "tolerance thresholds" for remote work. Following recent amendments to all treaties with neighbouring countries (Belgium, France and Germany), these thresholds have been harmonised and increased to a uniform 34 days. This ensures a consistent tax framework for all cross-border employees working for a Luxembourg employer.

If a cross-border worker works outside Luxembourg (eg, from home) for longer than these limits, the income corresponding to all days worked outside Luxembourg becomes taxable in their country of residence, rather than in Luxembourg.

Consequences of Remote Working

For individuals, working remotely for more than 34 days triggers a split taxation status. Salary must be allocated between Luxembourg (for days physically worked there) and the country of residence (for remote working days), necessitating payroll adjustments and potentially incurring a tax liability in the country of residence.

A non-resident company faces a PE risk if its employees work remotely from Luxembourg. While occasional remote work is generally tolerated, if home working becomes habitual or involves concluding contracts or managerial roles, it may trigger corporate tax liability for the foreign employer in Luxembourg.

Incentives

Luxembourg offers several attractive frameworks to optimise remuneration for individuals.

- Inpatriate regime: qualifying new resident employees can benefit from tax exemptions on 50% of their gross annual remuneration (applicable up to a maximum eligible remuneration base of EUR400,000), provided they meet certain conditions.
- Profit-sharing bonus: employees may receive a portion of company profits with a 50% tax exemption, up to certain thresholds (increased to 30% of the employee's gross annual salary as of 2025).
- Young professional bonus: a new support measure providing a 75% tax exemption on a specific employer-granted bonus. It is available for young employees under the age of 30 (on 1 January of the tax year) who are signing their first permanent employment contract (CDI) in Luxembourg.

3.6 Other Income

Carried Interest

Luxembourg has recently modernised its tax regime for carried interest for investment fund managers. Qualifying carried interest derived by resident individual taxpayers is either subject to tax at a highly preferential rate of one quarter of the standard rate (up to approximately 11.45%) or exempt, depending on the type of carried interest and whether specific conditions are met.

Directors' Fees

Luxembourg applies a flat withholding tax of 20% on the gross amount paid to non-resident directors. This tax is final only if the director's gross fees do not exceed EUR100,000 per year and the director derives no other professional income in Luxembourg. Although the OECD Model (Article 16) allocates taxing rights to the company's residence state, Luxembourg's use of a flat withholding tax makes compliance easier than the standard assessment process.

Intellectual Property

Luxembourg offers a specific tax regime for qualifying intellectual property assets (such as patents and copyrighted software). Under this regime, up to 80% of the net income, including capital gains, derived from eligible IP assets is exempt from income tax, resulting in an effective tax rate of approximately 4.8%.

This benefit is strictly linked to the "nexus approach" (Action 5 of the OECD BEPS Project), meaning the exemption only applies to income proportionate to the qualifying R&D expenditure actually incurred by the

taxpayer. Qualifying IP assets are also fully exempt from NWT.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Luxembourg has not taken any steps to implement Pillar One (Amounts A and B).

4.2 Pillar One – Amount A

Luxembourg has not taken any steps to implement Pillar One (Amounts A and B).

4.3 Pillar Two

Luxembourg implemented the global minimum tax under Pillar Two by enacting EU Directive 2022/2523, which included a Luxembourg Qualifying Domestic Minimum Top-Up Tax (QDMTT), through the Law of 22 December 2023.

This law came into force on 31 December 2023 and was subsequently amended in 2024 and 2025.

4.4 Specific Features or Deviations of Pillar Two

Luxembourg's legislation closely aligns with the OECD framework and remains fully compliant with the EU directive. Amendments to the law in 2024 and 2025 considered the latest OECD updates and guidance.

4.5 Digital Services Tax

Luxembourg has not introduced a specific tax on digital products. Any future initiative to implement such a tax would probably come about through EU-wide legislation or international negotiations.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax Evasion and Fraud

Administrative infractions

Simple tax fraud involves obtaining an undue tax advantage for oneself or somebody else, or intentionally reducing tax revenues. Involuntary tax fraud is caused by the taxpayer's negligence.

Criminal offences

Aggravated tax fraud is wilful tax evasion where the evaded tax (or undue refund) exceeds either 25% of the tax due (with a minimum value of EUR10,000) or EUR200,000.

Tax fraud (*escroquerie fiscale*) involves a significant amount of tax evaded, in terms of either the yearly taxes due or the absolute amount, and is committed through the systematic use of fraudulent manoeuvres to hide relevant facts from the authorities or mislead them.

Tax Avoidance

This is considered the use of tax rules and laws in a technically legal manner to obtain tax advantages or reduce tax liabilities, but potentially in a way that goes against legislative intent, which can result in it being deemed illegal by tax authorities and courts. Under the Luxembourg General Anti-Abuse Rule (GAAR), abuse occurs when a specific legal route is chosen with the main purpose or one of the main purposes of obtaining a tax advantage contrary to the intention of the tax law. The GAAR applies to all Luxembourg taxpayers.

5.2 Anti-Avoidance Mechanisms

Luxembourg has the GAAR and specific anti-abuse rules (SAARs) in place to identify and combat abusive arrangements and schemes.

Under the GAAR, arrangements that are not genuine, or a series of such arrangements, which are put in place with the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, shall be disregarded. Arrangements are considered non-genuine if they are not implemented for valid commercial reasons that reflect economic reality. Thus, the GAAR enables the Luxembourg tax authorities to disregard legal acts that are primarily tax-driven and contrary to the purpose of the law, unless the taxpayer can demonstrate valid non-tax reasons.

In addition to the GAAR, SAARs are relevant in a cross-border context – for example, controlled foreign company rules, interest limitation rules, anti-hybrid mismatch rules relating to certain income and withholding tax, and transfer pricing rules based on the arm's length principle. Another example is the principal purpose test provisions under Luxembourg's tax treaties.

Luxembourg also combats tax evasion and aggressive avoidance by exchanging information with other jurisdictions.

5.3 Blacklists and Non-Cooperative Jurisdictions

Luxembourg applies the EU list of non-cooperative jurisdictions for tax purposes.

Interest and royalties due by Luxembourg taxpayers to related entities based in a jurisdiction included on this list are not tax-deductible unless the taxpayers can prove that there are valid economic reasons relating to the transactions that originated such payments.

In this context, the recipients of the payments must be corporate entities (a look-through approach applies in cases where the recipients are transparent for tax purposes from a Luxembourg perspective) and the beneficial owners.

5.4 Reporting Obligations and Disclosure Regimes

To combat tax evasion, fraud and aggressive tax avoidance, Luxembourg has implemented an extensive set of reporting obligations. Key measures include:

- DAC6 mandatory disclosure rules, which require intermediaries and taxpayers to report certain cross-border arrangements;
- Country-by-Country Reporting and transfer pricing documentation for multinational groups;
- Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) reporting for financial institutions regarding foreign account information, enabling the automatic exchange of data with other jurisdictions; and
- suspicious transaction reporting obligations under AML legislation.

5.5 Role of Tax Authorities and Enforcement Measures

The Luxembourg tax authorities have extensive investigative powers, including conducting tax audits, accessing accounting and banking information, requesting third-party data, carrying out on-site inspections and, in some cases, making unannounced visits to businesses. The tax administration cannot autonomously conduct tax searches or raids (fiscal perquisitions); these become available only once a matter has been escalated to the criminal sphere, at which point the prosecutor and investigating judge may authorise searches, seizures and asset freezes.

These tools are complemented by extended assessment periods, powerful civil enforcement and asset seizure powers that can be exercised without court authorisation, and criminal prosecution mechanisms in cases of tax fraud.

6. Penalties and Sanctions

6.1 Tax Penalties

The Luxembourg General Tax Law, and in particular the law that implements EU DAC6 in Luxembourg, establishes the main legal framework for penalties in the event of a failure to comply with cross-border transaction reporting obligations. Penalties of up to EUR250,000 may be imposed on intermediaries and taxpayers if they fail to report or notify other intermediaries or relevant taxpayers (in the case of exempt intermediaries), if they report late, or if they provide incomplete or inaccurate information. This penalty may be applied to each reportable cross-border arrangement.

The authority responsible for enforcement is the *Administration des contributions directes*.

6.2 Criminal Penalties

The criminal tax offences and penalties are as follows.

- Aggravated tax fraud is punishable by imprisonment ranging from one month to three years and a fine ranging from EUR25,000 to up to six times the amount of evaded taxes (or unduly obtained refund).

- Tax fraud (*escroquerie fiscale*) is punishable by imprisonment ranging from one month to five years and a fine ranging from EUR25,000 to up to ten times the amount of evaded taxes (or unduly obtained refund).

The Luxembourg tax authorities qualify tax evasion involving amounts greater than EUR200,000, implying the use of fraudulent manoeuvres, as tax fraud. Criminal tax offences identified by the tax authorities are referred to the judicial authorities for prosecution.

6.3 Interaction Between Tax and Criminal Procedures

The tax and judicial authorities co-operate with each other through an inter-administrative and judicial co-operation mechanism. This co-operation notably involves the tax authorities being obliged to:

- provide information to the judicial authorities and to the Financial Intelligence Unit (CRF) upon their request; and
- notify the State Prosecutor whenever criminal tax offences (eg, aggravated tax evasion or tax fraud) and other crimes or offences are identified during the taxation procedure (including anti-money laundering crimes or offences).

This co-operation is mutual, in that the judicial authorities and the CRF must also communicate any information that could help to accurately impose taxes.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

In Luxembourg, administrative co-operation in tax matters is based on specific legislation, which often implements EU directives and multilateral/bilateral treaties.

Luxembourg Laws

- Luxembourg laws implementing the EU Directives on administrative co-operation (DAC): DAC1 to DAC7 (DAC2 for CRS) and DAC9 have been implemented either through the general law on administrative co-operation or through dedicated legislation. This includes the exchange of rulings (DAC3), the CbCR (DAC4) and the Mandatory Disclosure Rules (DAC6).
- DAC8 has not yet been implemented. A draft law is pending in Parliament.
- Luxembourg has implemented EU Directive 2010/24/EU on the mutual assistance in the recovery of tax claims.

Main Conventions

- Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
- Bilateral tax treaties concluded by Luxembourg generally include an exchange of information provision based on the OECD Model Convention (Article 26).
- Benelux Agreement on Cooperation between Administrative and Judicial Authorities.
- Agreement with the US regarding FATCA.

7.2 Exchange of Information Clauses in Tax Agreements

The tax treaties concluded by Luxembourg provide for the exchange of any information that is foreseeably relevant for applying the treaty or domestic laws between the competent authorities. In line with the OECD Commentary, this encompasses exchange on request, spontaneous exchange and automatic exchange, depending on the relevant tax treaty.

7.3 Other Forms of International Tax Collaboration

Luxembourg participates in:

- the OECD's International Compliance Assurance Programme (ICAP), which facilitates collaboration between multinational enterprises (MNEs) and tax administrations in a co-operative risk assessment process; and
- the European Trust and Cooperation Approach (ETACA) – Pilot 2, a European Commission initiative that fosters multilateral co-operation and preventative risk assessment among EU member states.

A legal framework for joint tax audits, as introduced under DAC7, has also been implemented in Luxembourg's domestic law. This creates a legal basis for

co-ordinated tax audits involving revenue authorities from two or more EU member states.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

The Luxembourg framework for the mutual agreement procedure (MAP) mainly comprises the Luxembourg law that implements EU Directive 2017/1852 among EU member states, as well as the MAP procedure set out in Luxembourg's relevant double taxation treaties.

8.2 Application Deadlines

For MAPs based on domestic law, the deadline is three years from the date of the initial notification of the measure that caused or will cause the dispute.

For MAPs based on a tax treaty, the deadline varies depending on the treaty. It is often two or three years from the first notification of the measure that led to the taxation being in breach of the tax treaty.

8.3 Mandatory Binding Arbitration

Luxembourg has also opted in to the arbitration clause under the MLI, and mandatory binding arbitration is included in some of its tax treaties. Where included, this clause obliges the relevant authorities to reach a binding decision through an independent arbiter when MAP negotiations fail.

The EU Arbitration Convention provides for an arbitration resolution mechanism. If the relevant competent authorities fail to reach an agreement to eliminate double taxation, they must establish an independent advisory commission to deliver an opinion on how to eliminate the double taxation in question. This opinion is binding on the competent authorities.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Luxembourg has an advance pricing agreement (APA) programme, which is set out in the general tax law. The programme offers taxpayers advance certainty on transfer pricing matters, helping them to avoid potential disputes with the tax authorities.

Taxpayers can apply for an APA through the advance tax clearance procedure.

9.2 Other Mechanisms

The general tax law provides for a procedure that allows taxpayers to request a binding advance tax clearance from the tax authorities on the application of Luxembourg tax law to transactions that they are considering but have not yet implemented. The request is subject to an administrative fee of between EUR3,000 and EUR10,000 depending on the complexity of the case.

This clearance is valid for a maximum period of five years, but it may be withdrawn under certain circumstances (eg, a change in applicable laws or in the taxpayer's facts and circumstances).

Clearances issued by the Luxembourg tax authorities are subject to exchange if the conditions of the law implementing DAC3 are met.

Trends and Developments

Contributed by:
Diogo Duarte de Oliveira, Antonio Weffer, Amar Hamouche and Olivier Dal Farra
Baker McKenzie Luxembourg

Baker McKenzie Luxembourg operates a sophisticated tax practice of 19 specialised professionals, including four partners and a dedicated team of counsels and associates. This significant local presence is amplified by a premier global network, providing clients with the collective intelligence of over 100 tax partners across the EMEA region. Baker McKenzie Luxembourg provides a comprehensive "full package" of tax services, delivering high-level expertise across all core practice areas, including corporate tax, indirect tax (VAT) and transfer pricing. The firm is a recognised leader in tax controversy and dispute resolution, while also offering specialised advice in transactional and real estate tax, and dedicated services for private clients and wealth management. The team provides sophisticated solutions for complex, cross-border transactions and navigates an ever-evolving legislative landscape. Through active leadership in ALFI, LPEA, ABBL and other associations, the team brings the voices and interests of clients directly to the heart of public regulatory discussions.

Authors



Diogo Duarte de Oliveira is a tax partner at Baker McKenzie's Luxembourg office, where he specialises in advising asset managers and institutional investors on fundraising, management incentive strategies and transaction structuring. A recognised thought leader, Diogo frequently contributes to international tax journals and speaks at global conferences. He was recently elected to the Board of Directors of the LPEA for a three-year term. Diogo is a member of the Luxembourg, Portuguese, American and International Bar Associations. He also actively contributes to several Luxembourg tax working groups within the AMCHAM and ABBL, further cementing his influence within the jurisdictional financial landscape.



Antonio Weffer is a tax principal and the head of transfer pricing at Baker McKenzie in Luxembourg. He has over 25 years' experience in handling complex financial and non-financial multinational enterprises, cross-border transactions, reorganisations and M&A across a range of industry sectors. Antonio's practice focuses on transfer pricing and valuation documentation, benchmarks and other economic analysis services to the business community worldwide. A recognised thought leader, Antonio regularly publishes on international tax and speaks at worldwide conferences. He is an active member of the AMCHAM Tax Committee, ALFI, IBA, IFA, LAFO and other associations.

Contributed by: Diogo Duarte de Oliveira, Antonio Weffer, Amar Hamouche and Olivier Dal Farra, **Baker McKenzie Luxembourg**



Amar Hamouche is a tax principal at Baker McKenzie, with over 20 years of expertise. He has significant knowledge in the field of financial services, within which he solves corporate tax matters on behalf of international clients, such as investment funds and asset managers, as well as holding companies and private equity structures. He has experience in all areas of Luxembourg income tax law, with an emphasis on corporate taxation. Amar also has significant experience in real estate tax and wealth management. He is an active member of the ALFI, ABBL, LPEA, IFA and other associations.



Olivier Dal Farra is a tax partner at Baker McKenzie, with 15 years of experience. His expertise covers all areas of Luxembourg income tax, focusing on investment structuring and transactional tax matters, alongside significant experience in wealth management and family office governance. Olivier provides strategic solutions on corporate tax matters for global clients, including asset managers and private equity firms. He is the author of a book on Luxembourg taxation for holding companies and a lecturer at Dauphine University, specialising in private estate and wealth management. He is an active member of ALFI, LPEA, LAFO, ACA and other associations.

Baker McKenzie Luxembourg

10-12, Bd Franklin Delano Roosevelt
L-2450 Luxembourg
Luxembourg

Tel: +352 26 18 44 1
Fax: +352 26 18 44 99
Email: Emmanuelle.petit@bakermckezie.com
Web: www.bakermckenzie.com

Contributed by: Diogo Duarte de Oliveira, Antonio Weffer, Amar Hamouche and Olivier Dal Farra, **Baker McKenzie Luxembourg**

International tax in 2026 is defined less by new concepts and more by operationalisation. The OECD/G20 Inclusive Framework's global minimum tax has moved from negotiation into routine compliance, and the practical focus has shifted to safe harbours, information returns and data governance. In parallel, the European Union is re-orienting its direct tax agenda toward simplification and consolidation, while continuing to implement multi-year digital projects in VAT and withholding tax relief. Luxembourg sits at the intersection of these developments: it is implementing Pillar Two and DAC9 in a way that emphasises administrative readiness, while delivering targeted domestic clarifications and reforms that matter for cross-border investment funds, financing structures and internationally mobile workforces.

Pillar Two Moves From Design to Execution

The "side-by-side" package reshapes the compliance landscape

A central international trend for 2026 is the stabilisation of the Pillar Two architecture through the Inclusive Framework's "side-by-side" package. The package is designed to reduce the compliance burden and to accommodate the concerns of the United States by introducing a safe harbour mechanism that should, in practice, exempt US-parented multinational groups from Pillar Two top-up taxes (except Pillar Two local top-up tax), while attempting to preserve the overall integrity of the Pillar Two framework. For Luxembourg-centred groups, the package matters because it influences the extent to which full computations are needed in certain jurisdictions, the sequencing of elections, and the content of reporting.

A new UPE safe harbour may apply for periods beginning on or after 1 January 2026. This safe harbour effectively replaces the existing transitional UTPR safe harbour rule, which expired at the end of 2025, although the jurisdictions covered may be significantly narrower.

Domestic top-up taxes (QDMTT) remain fully applicable, including for groups eligible for side-by-side or UPE safe harbours. In practice, this means that Luxembourg groups should treat the QDMTT analysis as the starting point and should not assume that a safe harbour election removes local top-up tax exposure.

Permanent and transitional safe harbours: where computations can be simplified

Following the release of the "side-by-side" package, a new permanent ("simplified ETR") safe harbour has been introduced. This safe harbour is intended, over time, to replace the transitional CbCR safe harbour and to provide a more permanent simplification mechanism for jurisdictions that are expected to remain consistently taxed at or above the 15% minimum rate. While conceptually designed as a significant simplification, the simplified ETR safe harbour is complex and requires computations beyond what is required for the transitional CbCR safe harbour.

The "side-by-side" package also extends the application period of the transitional CbCR safe harbour, by one additional year. The transitional safe harbour rules temporarily exempt groups operating in certain low-risk jurisdictions that fall in scope of Pillar Two from the detailed GloBE rules calculations and from any top-up taxes. As a result, subject to local implementation of the side-by-side package, the transitional safe harbour should apply for fiscal years beginning on or before 31 December 2027. A group with a calendar accounting year may therefore potentially benefit from the transitional safe harbour in respect of Luxembourg entities in 2024, 2025, 2026 and, subject to domestic implementation, also 2027.

The package also addresses the treatment of tax incentives through a Substance-Based Tax Incentive (SBTI) safe harbour.

Reporting and governance: the GIR becomes a management project

In 2026, Pillar Two reporting is as significant as computation. Groups making the side-by-side election still need to file a GloBE Information Return (GIR), but the GIR may be simplified to minimise required information, with only certain sections required for electing groups. This confirms a broader trend: the Inclusive Framework is willing to simplify reporting for certain cases, but the reporting obligation remains a central compliance deliverable.

Luxembourg's approach to Pillar Two in 2026 illustrates the same shift toward operational readiness. Luxembourg transposed DAC9 into domestic law on

17 December 2025, with effect from 1 January 2026, and opened an online platform in January 2026 to comply with Pillar Two registration and reporting obligations.

A practical takeaway is that Luxembourg-centred groups should implement a structured sequence. They should model QDMTT outcomes first, then layer in elections (Transitional CbCR, simplified ETR, SBTI and, where relevant, side-by-side/UPE), and align data pipelines and documentation with the reporting position. This sequencing matters because QDMTT exposure is not removed by side-by-side/UPE safe harbours, and because safe harbour integrity principles require consistent treatment of taxes and income across years.

OECD Treaty Developments: Remote Work, Transfer Pricing and Information Exchange

Remote work and permanent establishment risk becomes more structured

The OECD's 2025 Update to the Model Tax Convention, to be incorporated into revised editions in 2026, is a second international trend likely to affect Luxembourg-centred groups. The OECD update clarifies when a home or other remote location may constitute a place of business of the enterprise for Article 5 purposes, reflecting the proliferation of cross-border remote work.

The Update outlines a more structured analysis and refers to a 50% benchmark over a 12-month period as a reference point for assessing when remote work is "intermittent", while also stressing that exceeding the benchmark does not automatically create a permanent establishment. The guidance further focuses on whether there is a commercial reason for activities to be carried out in the other state, rather than the location being used purely for personal convenience. For Luxembourg groups, these developments reinforce the need to integrate HR policies, functional profiles and documentation with treaty-based risk assessments, particularly where senior decision-makers or client-facing personnel work across borders.

Treaty certainty and exchange of information continue to intensify

The OECD 2025 Update also contains updates to the Commentary regarding transfer pricing under Article 9, including financial transactions and Amount B, as well as changes to Article 25 on mutual agreement procedure and Article 26 on exchange of information. For Luxembourg-centred groups, the practical trend is that disputes and information exchange are increasingly systematised, and the standards applied in treaty interpretation continue to evolve in a direction that emphasises certainty, administrability and data use.

The EU 2026 Agenda: Simplification, Consolidation and Digitalisation

The EU Commission pivots from ambitious harmonisation to targeted simplification

A key European trend for 2026 is the EU Commission's shift toward simplification and consolidation in direct taxation. The EU Commission's 2026 Work Programme has withdrawn several initiatives, including Unshell (ATAD 3), DEBRA and the proposed transfer pricing directive, while maintaining other files at a pending status. A Tax Omnibus simplification package expected in June 2026 is intended to propose co-ordinated amendments across multiple EU corporate tax directives, including ATAD, the EU Parent-Subsidiary Directive, the EU Interest & Royalty Directive, the EU Merger Directive and the EU Dispute Resolution Directive.

For Luxembourg groups, the significance is twofold. First, the withdrawal of certain proposals reduces short-term uncertainty about major new EU-layer regimes. Second, the Omnibus approach suggests that changes will be delivered through co-ordinated, targeted amendments rather than through new "standalone" directives, and taxpayers should expect consultation and technical adjustment rather than a wholesale redesign.

DAC and ATAD evaluations: toward a more coherent compliance architecture

The DAC evaluation has concluded that the framework is effective but requires simplification. The Commission aims to consolidate DAC1–DAC9 into a single recast text to reduce duplications and inconsistencies, and there is a push for common EU guidance to

ensure consistent interpretation by all member states. Stronger penalty regimes are envisaged for certain DAC modules, and there is emphasis on more systematic use of exchanged data, including automatic reconciliation with national systems.

DAC6 is identified as a specific focus area. It is expected that hallmarks will be clarified and streamlined, potentially integrating "economic substance" concepts associated with the Unshell EU Directive. The expectation of a DAC recast proposal in 2026 and the Tax Omnibus timeline means that 2026 should be treated as the year in which the EU begins to rationalise the accumulated "layering" of transparency and anti-avoidance regulations.

Indirect tax and withholding tax: ViDA and FASTER enter implementation planning

Although the focus of this article is international tax, two EU projects in 2026 have cross-border operational consequences that clients regularly treat as part of their "international tax" risk landscape. The first is ViDA, formally adopted on 11 March 2025 with a phased rollout through 2035, including digital reporting requirements for cross-border B2B transactions from 1 July 2030 and alignment of domestic real-time reporting systems by 1 January 2035. For Luxembourg businesses, the practical implication is the need for multi-year roadmap planning around invoicing, data architecture and platform roles.

The second is FASTER, adopted and in force from 30 January 2025, with member states required to transpose by 31 December 2028 and application from 1 January 2030. FASTER introduces a standardised EU digital tax residence certificate and a framework for quick relief at source or quick refunds for withholding taxes on certain portfolio income, supported by Certified Financial Intermediaries and reporting obligations. Luxembourg's role as a cross-border investment platform means that intermediaries and investors should treat the 2025–2028 runway as an implementation period, not merely a future compliance date.

Luxembourg Domestic Developments: Strengthening the Platform for Investment Funds and Talent

CIV exemption on reverse hybrid rules

Luxembourg's domestic developments in 2026 include targeted clarifications that have international implications for investment fund structures and cross-border investment flows. A key example is the clarification by the Luxembourg authorities of the CIV exemption under the reverse hybrid rule. The reverse hybrid rule can subject certain Luxembourg tax transparent entities (such as CLPs/SLPs/FCPs) to corporate income tax where associated enterprises hold more than 50% and treat the entity as tax opaque, unless the CIV exemption applies.

The CIV exemption was clarified through Circular L.I.R. No 168quater/2 of 12 August 2025, outlining a broad interpretation of "securities", diversification assessed through investment policy and market risk exposure, and a practical benchmark that a fund is not considered diversified in principle if more than 30% is invested in securities from a single issuer, unless justified. The circular also addresses "widely held" criteria, including that a limited number of investors may still qualify in launch or liquidation phases and that in master-feeder structures the assessment is made at the level of feeder investors.

A particularly market-relevant point is that Luxembourg UCIs, SIFs and RAIFs are treated as CIVs in themselves without needing to check other conditions, thereby providing a clearer compliance framework.

Carried interest reform: aligning the tax framework with market practice

Luxembourg has also modernised its carried interest framework in a way that enhances the country's competitiveness as an investment funds management and talent hub. The Luxembourg law on carried interest dated 3 February 2026 clarifies and broadens the definition of carried interest, now described as a participation in the overperformance of an AIF, based on rights to the fund's net assets or proceeds.

It distinguishes between:

- Contractual Carried Interest (Contractual CI), which does not necessarily require an investment in the AIF, though such investment is permitted; and
- Carried Interest Linked to Fund Participation (Participation CI), which is inextricably tied to a direct or indirect holding in the AIF.

Contractual CI benefits from a 75% exemption, resulting in a maximum marginal rate of 11.45%. The Luxembourg law on carried interest opens the favourable treatment to Contractual CI interest that does not necessarily take the form of capital gains, which until now was not common in the Luxembourg market practice. Participation CI, on the other hand, is fully exempt if the participation is held for more than six months and does not qualify as an "important participation" (if the taxpayer, together with any members of his household, never held, in the five preceding years, 10% or more in the share capital of the company in which the participation is held).

The reform removes the full recovery investment condition and aligns the framework with AIF industry trends. This is significant because carried interest arrangements in private capital are increasingly diverse in legal form, and legal certainty around beneficiary eligibility and instrument treatment is a competitive factor for locating fund management functions and decision-makers.

Talent and substance: enhanced inpatriate regime

Luxembourg's international tax competitiveness in 2026 is also influenced by labour mobility measures. For instance, an upgraded inpatriate regime is applicable as from 2025, replacing complex cost-based exemptions with a clear and straightforward 50% exemption of gross annual remuneration, available until the end of the eighth tax year following the year the employee started work.

While these changes are domestic, they interact with international tax trends by shaping where key personnel and highly skilled employees are located and where decision-making substance is built, confirming Luxembourg's strong position as a leading financial centre in the EU.

MAURITIUS



Law and Practice

Contributed by:
Johanne Hague, Gaelle Angoh Li Ying Pin, Medina Torabally and Béatrice Phanjoo
CMS Prism in association with CMS

Contents

1. Sources and Principles p.283
1.1 Domestic Sources of International Tax Law p.283
1.2 Hierarchy of Sources p.284
1.3 OECD Model/United Nations Influence on Treaty Practice p.284
1.4 Multilateral Instrument p.284

2. Territoriality, Residence and Permanent Establishment p.284
2.1 General Principle of Territorial Taxation p.284
2.2 Tax Residence of Individuals p.284
2.3 Taxation of Resident Individuals p.284
2.4 Taxation of Non-Resident Individuals p.285
2.5 Tax Residence of Legal Entities p.285
2.6 Definition of Permanent Establishment p.286

3. Taxation of Cross-Border Income p.286
3.1 Income From Immovable Property p.286
3.2 Business Profits p.287
3.3 Passive Income p.287
3.4 Capital Gains p.288
3.5 Employment Income p.288
3.6 Other Income p.288

4. OECD/G20 Global Tax Reform p.288
4.1 Pillar One – Amount B p.288
4.2 Pillar One – Amount A p.288
4.3 Pillar Two p.288
4.4 Specific Features or Deviations of Pillar Two p.289
4.5 Digital Services Tax p.289

5. Anti-Avoidance and Anti-Evasion Measures p.289
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.289
5.2 Anti-Avoidance Mechanisms p.289
5.3 Blacklists and Non-Cooperative Jurisdictions p.290
5.4 Reporting Obligations and Disclosure Regimes p.290
5.5 Role of Tax Authorities and Enforcement Measures p.291

6. Penalties and Sanctions p.291
6.1 Tax Penalties p.291
6.2 Criminal Penalties p.291
6.3 Interaction Between Tax and Criminal Procedures p.291

7. Administrative Co-Operation p.291
7.1 Legal Framework for Administrative Co-Operation p.291
7.2 Exchange of Information Clauses in Tax Agreements p.291
7.3 Other Forms of International Tax Collaboration p.291

8. Mutual Agreement Procedures and Arbitration p.292
8.1 Availability and Legal Basis p.292
8.2 Application Deadlines p.292
8.3 Mandatory Binding Arbitration p.292

9. Dispute Prevention p.292
9.1 Advance Pricing Agreements p.292
9.2 Other Mechanisms p.292

Contributed by: Johanne Hague, Gaelle Angoh Li Ying Pin, Medina Torabally and Béatrice Phanjoo,
CMS Prism in association with CMS

CMS Prism in association with CMS specialises in all aspects of revenue law, including tax advisory, transactional tax and tax controversy matters, with a significant cross-border element. It represents clients at all levels of the dispute resolution process, including before the Supreme Court of Mauritius and the Judicial Committee of the Privy Council. The firm's expertise is consistently sought out for high-profile tax litigation on complex cross-border matters, including transfer pricing cases. In addition to domestic and international tax planning, the firm has a strong private wealth practice. It helps (ultra) high net worth individuals, business owners and family offices structure their affairs in a tax-efficient and compliant manner. The firm's founder, Johanne Hague, has appeared as an expert witness in Mauritius tax laws before the UK's First-tier (Tax) Tribunal and regularly lectures on tax issues at both local and international levels (notably at the International Bureau of Fiscal Documentation).

Authors



Johanne Hague is the founder and managing director of CMS Prism. She is a barrister-at-law practising at the Mauritian Bar and a solicitor of England & Wales. She worked in London for many years at magic circle law firm Linklaters and US investment bank JPMorgan Chase Bank. She was a senior partner at DLA Piper Africa's member firm in Mauritius prior to founding CMS Prism. Johanne's main area of expertise is tax law. She specialises in domestic and international taxation, and her expertise covers a broad range of transactional, contentious and advisory tax matters. She also represents clients before the Supreme Court of Mauritius and the Judicial Committee of the Privy Council.



Gaelle Angoh Li Ying Pin is the head of dispute resolution at CMS Prism and a barrister-at-law practising at the Mauritian Bar. She leads the firm's litigation practice with a strong focus on commercial disputes and tax controversy. Prior to joining CMS Prism, Gaelle was senior state counsel at the Attorney General's Office of Mauritius, where she worked for over 11 years. Gaelle has played an essential role representing the Mauritius Revenue Authority in complex tax cases. She has successfully handled high-profile tax controversy cases, including transfer pricing, exemptions and anti-avoidance matters. Her advocacy experience spans forums including the Supreme Court of Mauritius and specialised tribunals such as the Revenue Tribunal (previously the Assessment Review Committee).



Medina Torabally is a senior associate at CMS Prism and a barrister-at-law practising at the Mauritian Bar. She worked as an assistant legal counsel at the Permanent Court of Arbitration and as a litigation associate at a Tier-1 chambers in Mauritius. Medina's practice mainly focuses on tax advisory and tax controversy matters. She regularly advises multinational and domestic clients on contentious and transactional tax issues and assists clients in connection with audits, investigations and assessments by the Mauritius Revenue Authority. Medina regularly appears before the Revenue Tribunal (previously the Assessment Review Committee) and the Supreme Court. She also has experience in commercial disputes, construction contracts and data protection.



Béatrice Phanjoo is an associate at CMS Prism and a barrister-at-law practising at the Mauritian Bar. Prior to joining CMS Prism, she acquired litigation and advisory experience in private practice. Her main areas of expertise were civil and employment law, where she regularly advised domestic clients. Beatrice's practice now also includes tax controversy and tax advisory matters. She regularly appears before the Revenue Tribunal (previously the Assessment Review Committee) and advises CMS Prism's clients on the tax implications of cross-border transactions.

Contributed by: Johanne Hague, Gaelle Angoh Li Ying Pin, Medina Torabally and Béatrice Phanjoo,
CMS Prism in association with CMS

CMS Prism – in association with CMS

Level 7, IconEbene,
Rue de L'Institut,
Ebene,
Mauritius

Tel: +2304030900
Email: info@cms-prism.com
Web: www.prismchambers.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main sources of international tax law in Mauritius are domestic law, public international law and judicial precedents.

Primary Mauritian Legislation

The principal source of domestic tax law is the Income Tax Act 1995 ("ITA 1995").

Subsidiary Legislation

Regulations made by the Minister of Finance pursuant to Section 161 of the ITA 1995 have the force of law. The main sources of legislation for tax purposes include:

- the Income Tax Regulations 1996;
- the Income Tax (Foreign Tax Credit) Regulations 1996;
- the Income Tax (Negative Income Tax Allowance) Regulations 2017; and
- the Income Tax (Financial Assistance) Payment Special Allowance Regulations 2025.

International instruments

Mauritius follows a dualist approach: tax treaties and other international agreements have no direct effect in domestic law unless and until they are expressly incorporated and duly ratified. Once so incorporated and ratified, they have the force of law. More notably, Mauritius is a party to the Vienna Convention on the Law of Treaties of 1969 and has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Mauritius has developed an extensive treaty network with African, Asian and European jurisdictions. As at February 2026, Mauritius has concluded 46 tax treaties. There are seven treaties pending ratification; seven more await signature and 19 are being negotiated.

Beyond tax treaties, Mauritius participates in information exchange and mutual administrative assistance networks (eg, arrangements for automatic exchange of financial account information), which reinforce international transparency and compliance standards.

Jurisprudence

Case law is an important source of law in tax disputes before the Revenue Tribunal and the Supreme Court of Mauritius. Where there is limited local jurisprudence on specific concepts, the courts may seek persuasive guidance from Commonwealth authorities – principally the United Kingdom and New Zealand, given the similarities of their legislation to the ITA 1995. Domestic jurisprudence, however, has limited bearing on the interpretation of tax treaty provisions.

Tax administration

The Mauritius Revenue Authority (MRA) is the statutory body established under the Mauritius Revenue Authority Act 2004 to administer and enforce the revenue laws of Mauritius, including the assessment and collection of taxes under the ITA 1995.

Tax rulings

A taxpayer may apply to the Director-General (DG) of the MRA for a ruling in relation to a transaction. The DG must issue the ruling within 30 days of receipt of the application. Such ruling is binding on the MRA (but

not on the courts), except where there is a material difference in the facts.

Statements of Practice and guidance

Pursuant to Section 159A of the ITA 1995, the MRA issues Statements of Practice (SOPs) on the application of legal provisions. The MRA also issues communiqués and guidance notes to clarify aspects of the tax legislation. SOPs and guidance notes are persuasive in nature and are not binding on a court of law.

1.2 Hierarchy of Sources

International tax rules do not apply automatically in Mauritius until they are expressly incorporated and ratified into Mauritian law and operate with the force of law.

Matters not governed by an applicable treaty remain subject to domestic tax law. Where both domestic law and an incorporated treaty purport to apply to the same subject matter, the treaty (as implemented in Mauritian law) prevails to the extent of any inconsistency.

1.3 OECD Model/United Nations Influence on Treaty Practice

Mauritius broadly follows the recognised OECD model of taxation, and the tax treaties are generally drafted in compliance with OECD rules. Where the treaties are not modified by the Multilateral Instrument (MLI), the country uses bilateral protocols, for instance with India.

1.4 Multilateral Instrument

Mauritius is a signatory to the MLI, which was signed on 5 July 2017 and ratified on 18 October 2019. The MLI entered into force on 1 February 2020. Mauritius has listed 44 of its 46 tax treaties as Covered Tax Agreements, which, once modified, incorporate the base erosion and profit shifting (BEPS) minimum standards, with the principal purpose test as the main anti-abuse provision.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

For individuals, Mauritius applies a mixed source and remittance regime. Income derived from within Mauritius is chargeable regardless of the taxpayer's residence status, and foreign-source income is chargeable only when remitted to the country by a Mauritian resident.

Resident companies are subject to corporate income tax on their worldwide chargeable income at a rate of 15%, subject to any applicable exemption or credits available. Additional taxes may be imposed based on the turnover of the company – see **3.2 Business Profits**.

All taxes in Mauritius are administered under a unified tax system at the national level. Mauritius does not operate any separate regime for islands other than the main island.

2.2 Tax Residence of Individuals

Tax residence of individuals is determined according to one of the three criteria below, depending on whether an individual:

(i) has their domicile in Mauritius, unless their permanent place of abode is outside Mauritius;
(ii) has been present in Mauritius in that income year, for a period of, or an aggregate period of, 183 days or more; or
(iii) has been present in Mauritius in that income year and the two preceding income years, for an aggregate period of 270 days or more.

A person will be considered tax resident in Mauritius in any income year if one of those criteria is met save for (iii) above, in which case tax residence takes effect prospectively as from the third income year.

2.3 Taxation of Resident Individuals

An individual who is tax resident in Mauritius is taxed on all Mauritius-source income, other than exempt income, derived by them during the preceding income year. They are taxed on foreign source only if it is remitted to Mauritius.

Definition of Income

Income for the purposes of the ITA 1995 includes:

- any advantage in money or in money's worth such as salary, wages, leave pay, fee, overtime pay, perquisite, allowance, bonus, gratuity, commission or other reward or remuneration in respect of or in relation to the office or employment of that individual, any superannuation, compensation for loss of office, pension, retiring allowance, annuity or other reward in respect of or in relation to past employment or loss or reduction of future income of that individual, whether receivable by that individual or by any person who is or has been the spouse or dependant of that individual;
- any gross income derived from any business;
- any rent, royalty, premium or other income derived from property;
- any dividend, interest, charges, annuity or pension;
- basic retirement pension payable under the National Pensions Act 1976;
- any gross income, in money or money's worth, derived from the sale of immovable property in the course of any business; and
- any other income derived from any other source.

Income Tax Bands

As from the income year beginning on 1 July 2025, the Mauritius personal income tax regime provides for three tax bands, with the lowest bracket of income (up to MUR500,000 per annum) having a tax rate of 0%. The second bracket (MUR500,001–MUR1 million) attracts a rate of 10%. The highest bracket (above MUR1 million) is subject to a tax rate of 20%.

Fair Share Contribution

Individuals with a total annual income (including local dividends, which are usually exempt) exceeding MUR12 million in an income year are also liable to a "Fair Share Contribution" of 15% on the leviable income in excess of MUR12 million. This is payable at the time of the filing by the individual of their return of income. Dividends or distributions received from entities holding a global business licence, as well as from a foundation or a trust are, however, excluded from the total income considered.

Deductions

Personal reliefs, deductions and allowances under the ITA 1995 can only be claimed by resident individuals in an income year. Deductions can also be claimed in relation to an individual's dependants.

Exempt income is listed in the Third Schedule to the ITA 1995 and include, inter alia, dividends paid by a resident company.

Estate, Inheritance and Gift Taxes

There is no inheritance, succession, estate, donation or gift tax in Mauritius.

2.4 Taxation of Non-Resident Individuals

A non-resident is only taxable on all Mauritius-source income, other than exempt income. The types of income are addressed in **2.3 Taxation of Resident Individuals**.

2.5 Tax Residence of Legal Entities

The rule of tax residence for companies in Mauritius is determined based on the company's incorporation in Mauritius or the location of the company's central management and control.

A company is considered tax resident in Mauritius if:

- it is incorporated in Mauritius; or
- its central management and control are in Mauritius.

However, Section 73A of the ITA 1995 provides that a company incorporated in Mauritius, but centrally managed and controlled outside of Mauritius, may be deemed to be non-resident for tax purposes.

For Mauritius tax purposes, trusts and foundations are treated as companies (other than charitable trusts or foundations).

A trust is treated as tax resident:

- where the trust is administered in Mauritius and a majority of the trustees are resident in Mauritius; or
- where the settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed.

A foundation, on the other hand, is deemed resident:

- where it is registered in Mauritius; or
- where it has its central management and control in Mauritius.

Pursuant to the MRA's SOP 24/21 on trusts and foundations, a trust or foundation set up in Mauritius is treated as non-resident if it is centrally managed and controlled outside Mauritius. Central management and control is determined as follows:

- For trusts:
  (a) the trust is administered in Mauritius and a majority of the trustees are resident in Mauritius;
  (b) the settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed or at such time as the settlor adds new property to the trust; and
  (c) a majority of the beneficiaries or class of beneficiaries appointed under the terms of the trust are resident in Mauritius.
- For foundations:
  (a) the founder is resident in Mauritius; and
  (b) a majority of the beneficiaries appointed under the terms of a charter are resident in Mauritius.

2.6 Definition of Permanent Establishment

The ITA 1995 only defines a permanent establishment for the purposes of the qualified domestic minimum top-up tax (QDMTT) provisions, which are duly aligned with the OECD Model Tax Convention on Income and on Capital, as:

- (a) a place of business situated in a jurisdiction and treated as a permanent establishment in accordance with an applicable tax treaty in force, provided that such jurisdiction taxes the income attributable to it in accordance with a provision similar to Article 7 of the OECD Model Tax Convention;
- (b) if there is no applicable tax treaty in force, a place of business in respect of which a jurisdiction taxes under its domestic law the income attributable to such place of business on a net basis similar to the manner in which it taxes its own tax residents;
- (c) if a jurisdiction has no corporate income tax system, a place of business situated in that jurisdiction that would be treated as a permanent establishment in accordance with the OECD Model Tax Convention provided that such jurisdiction would have had the right to tax the income attributable to it in accordance with Article 7 of that Convention; or
- (d) a place of business that is not already described in paragraphs (a) to (c) above through which operations are conducted outside the jurisdiction where the entity is located provided that such jurisdiction exempts the income attributable to such operations.

Although the ITA 1995 does not contain a general definition of permanent establishment beyond the QDMTT provisions as provided above, the MRA would typically rely on Section 74 of the ITA 1995 to assert whether a foreign company has a taxable presence where it is carrying on business wholly or partly in Mauritius.

From a treaty perspective, most treaties generally define a permanent establishment as "a fixed place of business through which the business of the enterprise is wholly or partly carried on". The definition is further typically supplemented by an enumerated, non-exhaustive list of inclusions. For instance, the Mauritius–South Africa treaty, under Article 5, provides that permanent establishment includes, inter alia, a place of management, branch, office, factory, workshop, or site of natural-resource extraction, and the same is followed by express exclusions for activities such as use of facilities solely for the purpose of storage, display or delivery of goods.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Rental income from immovable property located in Mauritius is deemed to be Mauritius-source income and is subject to income tax regardless of whether it is received by a resident or a non-resident.

Rental income paid by any person other than an individual is also subject to Tax Deduction at Source

(TDS) at a rate of 7.5% for residents and 10% for non-residents.

TDS is applicable when the rental payment exceeds MUR500 per transaction. Generally, payments made by individuals are not subject to TDS unless the rental is for business purposes.

Sales of immovable property undertaken in the course of business will be tantamount to the income derived from such sale being generally taxable at the rate of 15%. However, a sale of immovable property not undertaken as trade shall not attract any tax inasmuch as capital gains are not taxable in Mauritius.

3.2 Business Profits

Resident companies are generally subject to the headline rate of 15% on their worldwide chargeable income subject to any credits or exemptions that may be applicable. The chargeable income is defined as net income, which is the amount remaining after allowable deductions from the gross income.

Exemptions and deductions may be applicable depending on the type of income or activity. For instance, companies involved in the import and export of goods are subject to a reduced rate of tax of 3%. Certain incentivised sectors also benefit from tax holidays.

Specific partial exemptions are also applicable to designated types of income such as foreign dividends or interest income subject to substance requirements being met.

Fair Share Contribution

The Fair Share Contribution (FSC) was introduced in the ITA 1995 in August 2025 and is applicable to companies having a turnover exceeding MUR24 million, and is applicable as from the year starting 1 July 2025 up until 30 June 2028. The FSC, however, does not apply to companies holding a global business licence in Mauritius nor to companies benefiting from tax holidays.

Corporate Social Responsibility Fund

Companies are required, in every year, to set up a corporate social responsibility (CSR) fund equivalent to 2% of their chargeable income in the preceding year. For CSR funds set up on or after 1 January 2019, 75% of the fund must be remitted to the DG of the MRA. For CSR funds set up prior to this, at least 50% should be remitted.

CSR is not applicable to companies holding a global business licence issued by the Financial Services Commission.

Corporate Climate Responsibility Levy

Companies and *sociétés* (partnerships) that have a turnover above MUR50 million are subject to a 2% corporate climate responsibility levy on their chargeable income. In addition, companies are required to set up a corporate social responsibility fund equivalent to 2% of their chargeable income in the preceding year.

3.3 Passive Income

Dividends

Dividends declared by local companies are exempted from tax in the hands of the recipient.

Foreign-source dividends received by residents are taxable at the rate of 15%. However, a tax credit for any foreign withholding tax (WHT) already suffered in the country of origin subject to proof may be applied. Alternatively, corporates may opt to apply for the partial exemption of 80% on the foreign dividends and reduce the tax chargeable to 3% upon satisfaction of prescribed substance requirements.

No WHT applies to dividends declared by resident companies.

Interest

Interest is generally taxable at 15% subject to the application of the 80% partial exemption, which may reduce the effective tax rate on such interest to 3% if the prescribed substance conditions are satisfied. Foreign tax credits for any WHT suffered abroad may also be applied.

Interest paid by any person, other than a bank or a non-bank deposit-taking institution, to a non-resident is generally subject to WHT at 15%. However, no WHT applies where the interest is paid by a company holding a global business licence to a non-resident not

carrying on business in Mauritius. This rate applies unless reduced or exempted under any tax treaty.

Royalties

Royalties are taxed at 15%.

Royalties paid to residents are subject to WHT at the rate of 10%, while those paid to non-residents are subject to a rate of 15%. However, there is no WHT on royalties paid by a company out of its foreign-source income to a non-resident. Treaties may provide for specific provisions for taxing royalties.

The ITA 1995 also provides that interests, rents, royalties, compensations and other amounts paid by a special purpose fund to a non-resident shall bear no WHT.

3.4 Capital Gains

There is no capital gains tax levied in Mauritius.

3.5 Employment Income

Pay As You Earn

Employment income is taxed under the pay-as-you-earn (PAYE) withholding system, whereby employers are required to withhold tax from emoluments when paid to employees and remit the tax to the MRA on a monthly basis. Employees can claim personal reliefs and deductions subject to the provisions of the ITA 1995 in respect to each income year by submitting an Employee Declaration Form to the MRA.

Pursuant to the First Schedule to the ITA 1995, tax is levied on remuneration as follows:

- the first MUR500,000 attracts a rate of 0%;
- the next MUR500,000 attracts a rate of 10%; and
- the remainder attracts a rate of 20%.

Cross-Border Employment

Emoluments are treated as Mauritius-source where they arise from an employment, the duties of which are performed wholly or mainly in Mauritius, irrespective of whether such emoluments are received in Mauritius or not.

Premium Visa

In a bid to encourage foreign nationals to have a digital nomad lifestyle in Mauritius, the Government of Mauritius introduced the Premium Visa in 2020. This visa enables non-citizens to stay in Mauritius for a period exceeding six months up to one year, with an option to renew.

Where an individual holding a Premium Visa derives income from work performed remotely from Mauritius, that income is deemed to be derived by them in Mauritius when it is remitted in Mauritius. Money spent in Mauritius via foreign credit or debit cards will not be considered to have been remitted in Mauritius and will not be subject to tax in Mauritius.

3.6 Other Income

No specific types of income other than those listed above are subject to special taxation rules.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Mauritius is an active member of the OECD/G20 Inclusive Framework on BEPS and intends to implement the two-pillar solution. Pillar One is yet to be directly implemented in Mauritius.

4.2 Pillar One – Amount A

Mauritius has not implemented Pillar One Amount A. However, it remains committed to actively participating in the OECD/G20 Inclusive Framework on BEPS and is aligning its tax legislation with international standards. It is not primarily focusing on the adoption of Pillar, as explained below.

4.3 Pillar Two

Following amendments made to the ITA 1995 in 2025, Mauritius implemented the QDMTT in line with the OECD's Pillar Two framework. The QDMTT will be applicable to every person who is a member of a multinational enterprise group with an annual consolidated revenue of EUR750 million or more in the consolidated financial statements of the ultimate parent entity in at least two of the four fiscal years immediately preceding the fiscal year in which the QDMTT is leviable, as from the year of assessment 2025/2026. However,

regulations clarifying the scope of application of the QDMTT and computation method are expected to be issued in order to ascertain its precise application.

4.4 Specific Features or Deviations of Pillar Two

Regulations with regard to the implementation of QDMTT delineating its scope, computation, administration and compliance obligations under the ITA 1995 are yet to be issued.

4.5 Digital Services Tax

Starting from 1 January 2026, a value-added tax (VAT) of 15% has been introduced on digital and electronic services supplied to a person in Mauritius by a foreign supplier having no permanent establishment in Mauritius.

Digital or electronic services include website supply, web hosting, programs on demand and software supply, amongst others.

Pursuant to the VAT Act 1998, a foreign supplier is required to be registered in Mauritius for VAT purposes, and where its turnover of taxable supplies exceeds, or is likely to exceed, MUR3 million (or its equivalent in foreign currency), the foreign supplier shall appoint a tax representative having a permanent establishment in Mauritius.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax legislation in Mauritius does not provide for a specific definition of tax fraud or tax evasion.

While the ITA 1995 does not set out an exhaustive definition of tax avoidance, it lays down that tax avoidance includes directly or indirectly:

- altering the incidence of income tax;
- relieving any person from liability to pay income tax; and
- avoiding, reducing or postponing any liability to pay income tax.

General anti-avoidance provisions under the ITA 1995 apply to any transaction entered into or effected that has, or would have had, the effect of conferring a tax benefit on a person and the MRA considers that the transaction was entered into or carried out for the sole and dominant purpose of enabling a taxpayer to obtain a tax benefit, having regard to:

- the manner in which the transaction was entered into or carried out;
- the form and substance of the transaction;
- the result that would have been achieved by the transaction;
- any change in the financial position of the relevant taxpayer that has resulted, will result, or may reasonably be expected to result, from the transaction;
- whether the transaction has created rights or obligations which would not normally be created between persons dealing with each other at arm's length under a transaction of the kind in question; and
- the participation in the transaction of a corporation resident or carrying on business outside Mauritius.

The ITA 1995 also provides for targeted anti-avoidance provisions, such as in the following circumstances:

- the payment of excessive management fees;
- excessive remuneration to shareholders or directors;
- the provision of non-dividend benefits to shareholders or relatives of shareholders; or
- the retention of rights over income in circumstances where property or income rights are transferred to a relative but the transferor retains control or enjoyment.

5.2 Anti-Avoidance Mechanisms

With the aim of deterring tax fraud, the MRA has adopted a significantly higher rate of penalties (50%) than generally imposed on assessments as per the MRA's SOP on penalties.

Tax avoidance, where established, is generally addressed through the assessment mechanism. The MRA may counteract the arrangement by raising an assessment on the basis of the tax outcome that would have applied in the absence of the avoidance scheme, thereby giving rise to additional tax and, where applicable, interest and administrative penalties.

By contrast, tax evasion is treated as an offence and may additionally trigger criminal enforcement whether there is an underlying tax assessment or not. In practice, the Fiscal Investigations Department of the MRA is mandated to combat fraud and other forms of tax evasion, and it conducts investigations into suspected tax evasion cases, gathers evidence and may recommend prosecution for relevant alleged offences.

The ITA 1995 provides that a number of breaches of its provisions constitute offences. More particularly, the ITA 1995 criminalises the behaviour of any person who wilfully and with intent to evade income tax:

- submits a false return of income;
- gives any false information;
- prepares or maintains or authorises the preparation or maintenance of any false books, records or documents or falsifies or authorises the falsification of any books, records or documents;
- produces for examination any false books, records or documents;
- makes default in the performance of any duty imposed on them under the ITA 1995;
- refuses, or fails, to attend and give evidence when required by the DG of the MRA or to answer truly and fully to any question put to them or to produce any document required of them; or
- misleads or attempts to mislead the DG of the MRA, in relation to any matter or thing affecting their own or any other person's liability to income tax,

to carry a liability to a fine not exceeding MUR50,000 and to imprisonment for a term not exceeding two years. Any conviction may also carry an order from the court to pay an amount which shall not exceed three times the difference between the income tax to which the person is liable and the income tax paid or payable in terms of any return of income submitted.

5.3 Blacklists and Non-Cooperative Jurisdictions

Mauritius does not maintain its own list of non-cooperative or high-risk jurisdictions under its tax laws. The country, however, generally aligns with OECD and EU standards focusing on automatic exchange of information and transparency.

5.4 Reporting Obligations and Disclosure Regimes

Common Reporting Standard

Mauritius is a signatory to the Common Reporting Standard (CRS). In June 2015, Mauritius signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters developed by the OECD and started to exchange information under the CRS as from 2018. Under the CRS, the MRA receives from the relevant Financial Institutions (as defined in the CRS) based in Mauritius, the information required to be disclosed and transmits that information to the relevant tax authorities.

Mauritian financial institutions are required to identify and report relevant accounts of non-residents to the MRA in a prescribed format, for onward automatic exchange with participating jurisdictions.

Foreign Account Tax Compliance Act

Mauritius has implemented the Foreign Account Tax Compliance Act (FATCA) under the Model 1 Intergovernmental Agreement, effective as from July 2014. The FATCA framework provides for exchange of tax information (upon request, spontaneous and automatic) between Mauritius and the USA. The implementation imposes reporting obligations on Mauritian financial institutions to the MRA, which then transmits the data to the US Internal Revenue Service.

Tax Information Exchange Agreements

Mauritius has concluded a network of tax information exchange agreements (TIEAs), alongside its double tax treaties, which enhance cross-border tax co-operation. The TIEA framework provides for exchange of information on request and may include data on ownership and from banks and financial institutions

subject to confidentiality safeguards. Mauritius has 11 TIEAs in force as at February 2026.

5.5 Role of Tax Authorities and Enforcement Measures

In cases of suspected fraud or evasion, the MRA is empowered to investigate and request information from an individual or company. This includes site visits, access to records and collection of documents after formal requests. In this context, the MRA is not limited by the usual three-year timeframe to conduct audits and raise assessments. The Fiscal Investigations Department of the MRA is further able to conduct investigations into potential tax evasion cases, to collect evidence and recommend prosecution for offences. Additionally, the Legal Services Department of the MRA can conduct inquiries with similar powers to those of police officers and lodge a case before the competent court of Mauritius.

6. Penalties and Sanctions

6.1 Tax Penalties

The MRA is vested with the statutory power to conduct any audit on a taxpayer's affairs and raise assessments where the MRA is not satisfied with the return filed by a taxpayer. It may revise the tax return of the taxpayer and impose an additional tax liability together with administrative penalties and interests. In its SOP on 'Imposition of Assessing Penalty' (SP 13/16), the MRA provides a comprehensive method by which such penalties are calculated. The MRA may impose an assessing penalty of 50% where it concludes that there has been a tax fraud.

6.2 Criminal Penalties

Tax evasion, which is treated as a criminal offence under the ITA 1995, will be subject to criminal proceedings and attract penalties as well as imprisonment terms. The Mauritian case law, however, does not include many convictions in relation to tax evasion.

Tax fraud usually would not lead to prosecution per se. In cases of suspected tax fraud, the MRA will conduct audits to consider whether there has been an understated tax liability. In the affirmative, the MRA will reassess the tax liability and impose high penalties and interest.

6.3 Interaction Between Tax and Criminal Procedures

Criminal proceedings usually start once the civil tax matter has been concluded or upon recommendation from the Fiscal Investigations Department of the MRA after completion of its inquiry.

Where the facts indicate a wider financial crime dimension, the MRA can co-ordinate with other regulatory authorities in Mauritius, including in cases where tax evasion is investigated alongside money laundering.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Mauritius is a member of the OECD G20 Inclusive Framework on BEPS and has ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which supports multilateral administrative co-operation. The country is also compliant with EU recommendations.

Mauritius also has an extensive network of double taxation avoidance agreements (DTAAs) that cater for co-operation between competent authorities of the contracting states.

7.2 Exchange of Information Clauses in Tax Agreements

Mauritius participates in the automatic exchange of information as a signatory to the CRS and under FATCA.

Mauritius has also implemented Country-by-Country Reporting in accordance with BEPS Action 13.

Mauritius currently has TIEAs with 11 countries.

7.3 Other Forms of International Tax Collaboration

Mauritius participates in several multilateral tax arrangements beyond mutual agreement procedures/advance pricing agreements, notably as a signatory

to the MLI to combat BEPS. It also participates in the automatic exchange of information via the CRS and is a member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. It, however, does not currently participate in OECD's International Compliance Assurance Programme.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Mauritius has implemented BEPS Action 14, which seeks to improve the resolution of tax-related disputes between jurisdictions, through the MLI. Tax treaties concluded between Mauritius and other states generally contain the provisions of Article 25 of the OECD Model Tax Convention to resolve issues arising where the actions of one or both contracting states result in taxation contrary to the provisions of a tax treaty. As such, the relevant article dealing with Mutual Agreement Procedures (MAPs) has been amended to allow a taxpayer to present a case to the competent authority of either Contracting State for mutual agreement assistance.

The legal footing rests on the tax treaty being ratified and published in the Government Gazette; its provisions are deemed to be effective as if they had been incorporated into the ITA 1995, by virtue of Section 76 of the ITA 1995.

This enables taxpayers to seek relief where actions of one or both contracting states result (or will result) in taxation not in accordance with the DTAA. Treaties incorporating the BEPS Action 14 guidelines contain clearer timelines for notification and initiating of the MAP and for binding arbitration in the event that the MAP is not successful, such as the Mauritius–Germany DTAA.

8.2 Application Deadlines

The time limit for filing a MAP request is set by the applicable tax treaty. Most Mauritian DTAAs (reflecting Article 25 of the OECD Model Tax Convention) require the taxpayer to lodge a MAP request within three years from the first notification of the measure that gives rise to taxation not in accordance with the treaty; an exception is the Mauritius–Nepal DTAA, which generally applies a two-year limit.

8.3 Mandatory Binding Arbitration

As highlighted in the MRA guidance notes on MAP issued in November 2020, Mauritius has opted for the mandatory binding arbitration provisions under Part VI of the MLI. These provisions will apply only between Contracting States that have chosen to apply Part VI to their Covered Tax Agreements. The following treaty partners of Mauritius have chosen to apply Part VI:

- Barbados
- Belgium
- Congo
- Estonia
- France
- Germany
- Lesotho
- Luxembourg
- Malta
- Monaco
- Singapore
- United Kingdom

It is apposite to note that Mauritius has reserved the right to exclude cases in relation to anti-avoidance cases and criminal offences.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Mauritius has not implemented an advance pricing agreement programme as at February 2026.

9.2 Other Mechanisms

A taxpayer may apply to the MRA for a tax ruling pursuant to Section 159 of the ITA 1995. The tax ruling is binding on the MRA, save and except where there is a material difference in the facts of a transaction compared with the facts disclosed in the ruling application. This includes rulings on the application of treaty provisions to which Mauritius is a party.

MEXICO



Law and Practice

Contributed by:
Ángel Escalante, Gabriel Rojas, Daniel Colunga and Brenda Favela
Escalante & Asociados

Contents

1. Sources and Principles p.295
1.1 Domestic Sources of International Tax Law p.295
1.2 Hierarchy of Sources p.295
1.3 OECD Model/United Nations Influence on Treaty Practice p.296
1.4 Multilateral Instrument p.296

2. Territoriality, Residence and Permanent Establishment p.296
2.1 General Principle of Territorial Taxation p.296
2.2 Tax Residence of Individuals p.296
2.3 Taxation of Resident Individuals p.297
2.4 Taxation of Non-Resident Individuals p.297
2.5 Tax Residence of Legal Entities p.297
2.6 Definition of Permanent Establishment p.297

3. Taxation of Cross-Border Income p.298
3.1 Income From Immovable Property p.298
3.2 Business Profits p.299
3.3 Passive Income p.299
3.4 Capital Gains p.299
3.5 Employment Income p.300
3.6 Other Income p.300

4. OECD/G20 Global Tax Reform p.300
4.1 Pillar One – Amount B p.300
4.2 Pillar One – Amount A p.300
4.3 Pillar Two p.300
4.4 Specific Features or Deviations of Pillar Two p.301
4.5 Digital Services Tax p.301

5. Anti-Avoidance and Anti-Evasion Measures p.301
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.301
5.2 Anti-Avoidance Mechanisms p.302
5.3 Blacklists and Non-Cooperative Jurisdictions p.303
5.4 Reporting Obligations and Disclosure Regimes p.304
5.5 Role of Tax Authorities and Enforcement Measures p.304

6. Penalties and Sanctions p.305
6.1 Tax Penalties p.305
6.2 Criminal Penalties p.305
6.3 Interaction Between Tax and Criminal Procedures p.306

7. Administrative Co-Operation p.306
7.1 Legal Framework for Administrative Co-Operation p.306
7.2 Exchange of Information Clauses in Tax Agreements p.307
7.3 Other Forms of International Tax Collaboration p.307

8. Mutual Agreement Procedures and Arbitration p.308
8.1 Availability and Legal Basis p.308
8.2 Application Deadlines p.308
8.3 Mandatory Binding Arbitration p.308

9. Dispute Prevention p.308
9.1 Advance Pricing Agreements p.308
9.2 Other Mechanisms p.309

Escalante & Asociados (E&A Legal) is a boutique tax law firm with a team of highly specialised practitioners, focused on tax controversy and non-contentious tax matters. Established in 2015 by its managing partner, Ángel Escalante Carpio, the firm operates from offices in Mexico City and Houston, Texas, providing strategic advice on complex domestic and cross-border tax matters, particularly in the Mexico–US corridor. The firm is recognised for its expertise in tax audits, administrative proceedings, and high-stakes tax litigation, as well as in international tax planning, restructuring, compliance, and AML matters, offering an integrated approach that combines technical sophistication with a strong business-oriented perspective. Its practice also covers foreign trade, real estate tax structuring, estate planning for HNW individuals, and double taxation issues. E&A Legal regularly represents clients in disputes before Mexican tax authorities and advises multinational and domestic companies on the design and implementation of robust tax structures to mitigate risks and support their long-term business objectives, including cross-border operations and intercompany transactions.

Authors



Ángel Escalante is the founding partner of E&A Legal, with more than 20 years of experience in tax controversy, including administrative proceedings, tax audits and litigation before Mexican authorities. His practice focuses on complex tax disputes, international taxation and matters involving foreign trade and anti-money laundering compliance. He holds law and accounting degrees, as well as a master's degree in tax law, and has completed advanced studies in international taxation. He is a member of the World Compliance Association, under which he co-ordinates the Tax Committee in Mexico, and the International Fiscal Association.



Gabriel Rojas is a partner at E&A Legal with more than ten years of experience in corporate tax and controversy, focusing on administrative proceedings, audits and disputes before Mexican authorities. His practice focuses on domestic and international tax matters, including cross-border structuring, foreign trade and tax incentive programmes such as IMMEX and PROSEC, as well as VAT and excise tax certifications. He regularly represents clients before the Mexican Tax Administration Service (SAT) and other regulatory bodies. Gabriel has completed a law degree and postgraduate studies in international tax law, including an Advanced LLM from the University of Amsterdam, and is a member of the International Fiscal Association.



Daniel Colunga is an associate at E&A Legal, focusing on tax controversy, including administrative and constitutional tax litigation. He advises and represents clients in audits, investigations and disputes before Mexican authorities, including the Mexican Tax Administration Service (SAT), PRODECON and other regulatory bodies, as well as before administrative and constitutional courts. His practice centres on complex tax disputes and enforcement-related matters. Prior to joining E&A Legal, he worked at specialised tax law firms, where he gained experience in taxpayer defence. Daniel holds a law degree from Escuela Libre de Derecho and is a member of the International Fiscal Association.



Brenda Favela is an associate at E&A Legal, focusing on tax controversy, including administrative and constitutional tax litigation. She advises and represents domestic and international clients in audits, assessments and disputes before Mexican authorities and courts, participating in the preparation of administrative appeals, annulment claims and constitutional (amparo) actions. Her practice focuses on complex tax disputes and enforcement-related matters. She also has experience in foreign trade and anti-money laundering compliance, supporting a multidisciplinary approach to regulatory issues. Brenda holds a law degree from Universidad Anahuac México.

Escalante & Asociados

Torre Altiva/Blvd Manuel Avila Camacho 138 Piso 8
Lomas de Chapultepec
Miguel Hidalgo
11000, Mexico City
Mexico

Tel: (+52) 55 8854 9587
Email: dmariscal@eyalegal.com
Web: www.eyalegal.com



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The Mexican tax legal system is primarily grounded in the Political Constitution of the United Mexican States (the "Federal Constitution"), particularly in Article 31, section IV, which establishes the obligation of individuals to contribute to public expenditure in a proportional and equitable manner. These constitutional principles operate as substantive limits on the taxing power of the state and apply equally in the context of international taxation.

In addition, Article 133 of the Federal Constitution establishes the hierarchy of legal norms within the Mexican legal system, providing that international treaties concluded by the executive and approved by the senate form part of the supreme law of the union.

The principal legislative source governing international taxation is the Mexican Income Tax Law (MITL), which regulates, among other things:

- the taxation of non-residents on Mexican-source income;
- the concept and taxation of permanent establishments (PEs);
- transfer pricing rules applicable to related party transactions; and
- preferential tax regimes.

The Federal Fiscal Code (FFC) complements this framework by establishing general procedural provisions, including the audit powers of the tax authorities and interpretative rules applicable to tax legislation.

Administrative interpretation is primarily issued by the Mexican Tax Administration Service (*Servicio de Administración Tributaria* or SAT), particularly through: (i) the annual Miscellaneous Tax Resolution and its annexes; and (ii) non-binding interpretative criteria.

Judicial precedents issued by the federal judiciary as well as decisions of the Federal Administrative Justice Court constitute another important source of international tax rules in Mexico.

Finally, Mexico maintains an extensive network of double taxation treaties (currently exceeding 60 agreements). These treaties aim not only to eliminate double taxation but also to prevent tax evasion and allocate taxing rights between contracting states.

1.2 Hierarchy of Sources

From a theoretical perspective, Mexico is generally regarded as following a monist approach, since international treaties become part of domestic legal order upon their approval by the senate and do not require further legislative transformation. This is expressly recognised in Article 133 of the Federal Constitution, which establishes that treaties concluded by the executive and approved by the senate form part of the supreme law of the union.

However, the hierarchy position of treaties within the national legal system has been clarified through Supreme Court of Justice jurisprudence which has established that: (i) international treaties on human rights have a constitutional hierarchy; and (ii) other international treaties, including tax treaties, are hierarchically below the Federal Constitution but above federal legislation.

This constitutional framework must be read together with the principle of tax legality, derived from Article 31, section IV of the Federal Constitution, which requires that taxes be established by law. Under this principle, only a formal legislative act may determine the essential elements of taxation, including the taxable event, the tax base and the applicable rate.

As a result, tax treaties cannot create taxes or establish new taxable events, since this would exceed the limits imposed by the principle of legality. Instead, they operate as instruments that allocate and limit taxing rights between jurisdictions, thereby preventing double taxation and reducing instances of double non-taxation.

Accordingly, in the national legal system, the interaction between domestic law and tax treaties follows a structured approach:

- domestic tax law determines the existence of a taxable event and the applicable tax liability;
- tax treaties subsequently operate to restrict or allocate taxing rights between contracting states; and
- where applicable, treaties may provide relief mechanisms, such as reduced withholding tax rates or exemption methods.

This reflects the dual function of tax treaties in the Mexican system: they form part of domestic law but operate primarily as co-ordination instruments rather than independent sources of taxation.

1.3 OECD Model/United Nations Influence on Treaty Practice

Mexico generally follows the OECD Model Tax Convention, although its treaty practice also incorporates elements of the United Nations Model Double Taxation Convention, particularly in areas where source-based taxation is emphasised.

This is reflected, for example, in provisions relating to to: (i) PE definition; (ii) taxation of services; and (iii) certain categories of income where broader source taxing rights are preserved.

Mexican courts have also recognised that the OECD Model Commentary constitutes soft law. While it is not legally binding, it is frequently used as an interpretative tool when applying tax treaties, particularly where treaty language aligns with the OECD Model.

1.4 Multilateral Instrument

Mexico is a signatory to the Multilateral Instrument (MLI), adopted as part of the OECD/G20 BEPS Project, which was designed to simultaneously modify multiple bilateral tax treaties, incorporating provisions intended to combat base erosion and profit shifting (BEPS).

The MLI was approved by the Mexican Senate on 12 October 2022 and published in the Official Gazette on 22 November 2022. Mexico deposited its instrument of ratification before the OECD on 15 March 2023 and the MLI came into force in Mexico on 1 July 2023.

However, its provisions only became effective as of 1 January 2024.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

The Mexican tax system is based on a combination of residence and source principles, which determine the territorial scope of the state's taxing power.

Mexican tax residents are subject to taxation on a worldwide income basis, meaning that all income is taxable regardless of where it is generated. This principle is established in Article 1 of the MITL.

To mitigate potential situations of international double taxation, Article 5 of the MITL allows taxpayers to credit foreign taxes paid against their domestic income tax liability, subject to certain limitations.

By contrast, non-residents are taxed only on Mexican-source income, in accordance with Title V of the MITL. In this context, the existence of a PE in Mexico is a key factor in determining the applicable tax regime.

2.2 Tax Residence of Individuals

According to Article 9 of the FFC, an individual is considered tax resident when: (i) they have a permanent

home in Mexico; or (ii) their centre of vital interests is located in Mexico.

The concept of centre of vital interests is determined through objective economic criteria. An individual is deemed to have their centre of vital interests in Mexico when: (i) more than 50% of their total income during the calendar year is derived from Mexican sources; or (ii) their principal professional activities are carried out in Mexico.

In practice, Mexican law relies primarily on these economic indicators, rather than on broader personal or family ties.

In addition, Mexican nationals are generally presumed to remain tax resident in Mexico, unless they formally notify the tax authorities of a change of tax residence. Accordingly, the loss of Mexican tax residence requires not only a change in factual circumstances but also compliance with formal administrative requirements, including the filing of a notice before the tax authority.

2.3 Taxation of Resident Individuals

As mentioned above, individuals who are tax resident are subject to income tax on their worldwide income, which is calculated by applying a progressive rate schedule established in Article 152 of the MITL, under which the applicable tax rate increases according to the level of income earned.

The taxable base is determined by subtracting allowable deductions from gross taxable income. These deductions may include certain personal expenses, contributions, and other deductions expressly authorised under domestic tax law, such as medical expenses, transportation expenses, and similar items.

In the international context, the principal mechanism used to avoid double taxation is the foreign tax credit, which allows taxpayers to credit foreign taxes paid against domestic income tax liabilities, within the limits established by Mexican legislation.

2.4 Taxation of Non-Resident Individuals

Non-residents deriving income from Mexican sources are subject to income tax in accordance with Title V of the MITL provisions. In general terms, such income is taxed through withholding at source, applying specific rates depending on the income, including: (i) employment income; (ii) interest; (iii) dividends; (iv) royalties; and (v) capital gains.

The applicable withholding rates will depend on the type of income and the specific conditions established under domestic law. However, when an applicable double taxation treaty exists, the taxpayer may benefit from reduced withholding rates or alternative allocation of taxing rights provided under the treaty.

2.5 Tax Residence of Legal Entities

Pursuant to Article 9 of the FFC, a legal entity is considered tax resident when its principal place of business administration or place of effective management is located within Mexican territory.

This criterion is complemented by Article 4-A of the MITL, which provides that foreign transparent legal entities may also be treated as Mexican tax residents when their place of effective management is located in Mexico.

This criterion aims to identify the jurisdiction where key strategic and managerial decisions are effectively made, reflecting the approach generally adopted in international tax law for determining the residence of legal entities.

2.6 Definition of Permanent Establishment

Under Article 2 of the MITL, a permanent establishment is defined as any place of business through which business activities are wholly or partially carried out, or through which independent personal services are rendered.

Examples of PEs include branches, agencies, offices, factories, workshops, installations, mines, quarries and any place where natural resources are explored, extracted or exploited.

The MITL also recognises the existence of a dependent agent PE in cases where a person in Mexico habitually acts on behalf of a foreign resident and performs activities leading to the conclusion of agreements that:

- are concluded in the name of the foreign resident;

- involve the transfer of ownership rights or the granting of the use or enjoyment of property owned by the foreign resident; or
- require the foreign resident to provide services.

PE domestic definition is aligned with the OECD Model Tax Convention definition, particularly regarding the existence of a fixed place of business through which the enterprise carries on its activities.

However, Mexico introduced some reservations and observations with respect to the OECD Model, particularly concerning:

- the recognition of a PE in construction or supervision projects exceeding certain time thresholds;
- taxation of services performed in the source state for extended periods; and
- the interpretation of preparatory or auxiliary activities.

These positions reflect Mexican policy stance as a source-oriented jurisdiction seeking to preserve broader taxing rights over income generated within its territory.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Taxation of Residents

Resident legal entities

Resident legal entities are taxed on their worldwide income under the general corporate income tax regime. Accordingly, income derived from immovable property, whether through transfer or leasing, is included in the taxable base and is subject to the general corporate income tax rate of 30%.

Capital gains are determined on a net basis, by subtracting the tax basis and allowable deductions from the sale price. This gain is tax at the corporate income tax rate of 30%.

Resident individuals

Resident individuals are also taxed on a worldwide income basis, but subject to a progressive rate schedule under Article 152 of the MITL.

In the case of real estate leasing, individuals can choose between: (i) deduction of the proven expenses like maintenance, insurance and property tax; or (ii) a so called “blind deduction” under which a statutory 35% deduction of the gross income plus property tax applies.

In the case of capital gains from the transfer of real estate, the taxable gain is calculated by subtracting the cost of acquisition and authorised deductions from the sale price. Capital gains derived from the transfer of real estate are determined by subtracting the tax basis (cost of acquisition) and certain allowable deductions from the sale price. The corresponding tax is calculated using the progressive rate schedule established in Article 152 of the MITL.

Additionally, the MITL provides that if the real estate is the taxpayer’s primary residence, the sale may be exempt up to 700,000 UDIs or investment units (approximately USD320,000).

Taxation of Non-Residents

For non-residents, Article 160 of the MITL provides that the tax is determined by applying a 25% withholding tax on the gross proceeds, without allowing deductions.

However, non-residents may elect to be taxed on a net basis (ie, on the actual capital gain) applying the general tax rate, provided certain formal requirements are met. These include the requirement that the transaction be formalised through a public deed before a notary public and that the relevant reporting obligations be satisfied.

In addition, certain state-level taxes on the acquisition of real estate may apply depending on the jurisdiction where the property is located.

Rental income from real estate located in Mexico

For non-residents, withholding tax at source is applied, typically at a 25% rate on the gross income, without allowing deductions.

3.2 Business Profits

Pursuant to Article 9 of the MITL, business profits earned by resident legal entities are subject to corporate income tax at a rate of 30%.

Resident legal entities are taxed on a worldwide income basis, meaning that all income must be included in the tax base regardless of the jurisdiction in which it arises. Income tax is paid through monthly advance payments calculated based on accumulated profits during the fiscal year.

For non-residents, business profits are generally taxable only if they are attributable to a PE located in Mexican territory, according to Article 2 of the MITL and applicable tax treaties.

Rule 2.1.33 of the Miscellaneous Tax Resolution establishes that, for the purpose of applying tax treaties, the term "business profits" refers to income derived from business activities, which pursuant to Article 16 of the FFC, are defined as those of a commercial, industrial, agricultural, livestock, fishing or forestry nature; thereby providing a functional domestic reference for the interpretation of the treaty concept of business profits.

3.3 Passive Income

Passive income (eg, dividends, interest and royalties) is generally taxed through withholding at source.

Dividends

Dividends distributed by Mexican companies to resident individuals are subject to an additional withholding tax of 10% in accordance with Article 140 of the MITL.

Dividends paid to non-residents are also subject to a 10% withholding tax, subject to potential reductions under an applicable tax treaty.

Interest

Interest income is subject to different withholding rates depending on the nature of the lender and the financial instrument involved. In general terms, withholding rates range approximately between 4.9% and 35%, pursuant to Title V of the MITL provisions.

For tax residents, interest income is treated as taxable income and included in the taxpayer's taxable base.

Royalties

Royalties paid to non-residents are subject to withholding taxes that may range between 1% and 25%, depending on the nature of the underlying rights involved (eg, copyrights, patents, trade marks or technical assistance) (Article 167 of the MITL).

Withholding Tax

The withholding tax rates established under domestic legislation may be reduced or eliminated under an applicable double taxation treaty.

In practice, treaty benefits are generally applied directly at the withholding stage by the payer (withholding agent), who is responsible for applying the appropriate reduced rate, provided that the recipient demonstrates tax residence in the relevant contracting state and complies with the applicable procedural requirements under national law.

In this context, the withholding agent assumes a position of joint liability for the correct application of the treaty provisions. Accordingly, if treaty benefits are applied incorrectly, the withholding agent may be held liable.

3.4 Capital Gains

Capital gains are generally treated as taxable income for income tax purposes.

Residents

For resident individuals, capital gains are taxed under the progressive rates established in Article 152 of the MITL, while resident legal entities are taxed at the corporate income tax rate of 30%.

Non-Residents

For non-residents, capital gains derived from the disposal of assets located in Mexico or shares issued by Mexican companies may be subject to withholding taxes under Title V of the MITL, unless an applicable tax treaty provides otherwise.

3.5 Employment Income

Employment income is taxed in Mexico under the progressive rate schedule established in Article 152 of the MITL. The tax is withheld and remitted by the employer, who acts as the withholding agent.

Pursuant to Article 154 of the MITL, for non-resident employees, income is considered to have a Mexican source when the services are performed within Mexican territory. However, when: (i) the salary is paid by a foreign employer without a PE in Mexico; and (ii) the employee remains in Mexico for less than 183 days within a 12-month period, the income may be exempt from Mexican taxation, provided that the statutory conditions are satisfied.

Currently, Mexican tax legislation does not contain specific rules addressing cross-border remote work, and therefore the tax treatment generally depends on the physical location where the services are effectively performed.

3.6 Other Income

There are other categories of income subject to specific rules under Mexican law, such as: (i) independent personal services; and (ii) technical assistance. In certain cases, the tax treatment may differ from that contemplated in the OECD Model Tax Convention, particularly with respect to the definition and taxation of royalties and technical assistance, in relation to which, Mexico has applied reservations in its treaty practice.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Amount B of Pillar One was developed by the OECD as a mechanism designed to simplify the application of the arm's length principle in certain baseline marketing and distribution activities.

Specifically, Amount B proposes a standardised return for routine marketing and distribution functions considered low risk, with the objective of reducing transfer pricing disputes and enhancing tax certainty.

To date, Mexico has not formally adopted a specific domestic regime implementing Amount B within its tax legislation. Consequently, distribution activities carried out by multinational enterprises continue to be analysed under the general transfer pricing rules under the MITL, as well as under the OECD Transfer Pricing Guidelines.

4.2 Pillar One – Amount A

Amount A of Pillar One represents a structural shift from the traditional international tax framework based on the PE concept.

Under this approach, a portion of the residual profits of certain multinational enterprise groups would be reallocated to market jurisdictions where consumers or users are located, even in the absence of physical presence.

The purpose of this mechanism is to adapt the international tax system to highly digitalised business models capable of generating significant revenues in a jurisdiction without substantial physical presence.

Mexico has participated actively in the development of Pillar One as a member of the OECD/G20 Inclusive Framework and has generally supported the objective of partially reallocating taxing rights to market jurisdictions.

Nevertheless, the effective implementation of Amount A depends on the entry into force of a multilateral convention, which would subsequently need to be incorporated into domestic law following the constitutional procedure applicable to international treaties.

4.3 Pillar Two

Pillar Two introduces a global minimum tax system designed to ensure that multinational enterprises pay a minimum level of taxation regardless of where they operate.

The system is based on the Global Anti-Base Erosion Rules (GloBE), which establish a minimum effective tax rate of 15% for multinational enterprise groups with consolidated revenues exceeding approximately EUR750 million.

The mechanism operates by determining the effective tax rate (ETR) in each jurisdiction where the multinational group operates. When the ETR in each jurisdiction falls below the 15% minimum rate, a top-up tax is triggered in order to increase the effective tax burden to the agreed minimum level.

At the time of writing, Mexico has not formally implemented Pillar Two rules in its domestic legislation, and therefore the global minimum tax does not currently apply within the Mexican tax system.

4.4 Specific Features or Deviations of Pillar Two

See **4.3 Pillar Two**.

4.5 Digital Services Tax

Mexico has not adopted a specific digital services tax (DST) comparable to those implemented in certain jurisdictions within the European Union. However, in 2020, domestic legislation introduced a special value added tax (VAT) regime applicable to digital services supplied by non-resident providers without a PE in Mexico.

Under this regime, foreign digital service providers supplying services to users located in Mexico (ie, streaming platforms, digital intermediation platforms or online services) must:

- register before SAT;
- charge and remit VAT on the services provided; and
- comply with reporting and information obligations.

The objective of this regime is to ensure tax neutrality between domestic and foreign digital service providers and secure VAT collection within the digital economy.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Under Article 108 of the FFC, a person commits tax fraud when, through deceit or by taking advantage of errors, they wholly or partially omit the payment of taxes or obtain an undue benefit to the detriment of the federal treasury. In addition, Article 109 of the FFC establishes a series of conducts treated as equivalent to tax fraud, which are punishable with the same penalties.

By contrast, the concepts of tax evasion and tax avoidance are not expressly defined in domestic tax legislation. However, under a doctrinal perspective, a distinction is typically made between:

- tax evasion, which involves the unlawful failure to comply with tax obligations through concealment, misrepresentation or falsification; and
- tax avoidance, which refers to the reduction or deferral of tax liabilities through formally lawful arrangements that exploit gaps or inconsistencies in the law, for the primary purpose of obtaining a tax advantage.

The latter category is addressed primarily through the General Anti-Avoidance Rule (GAAR) established in Article 5-A of the FFC, which provides that legal acts lacking a valid business purpose and generating a direct or indirect tax benefit may be recharacterised for tax purposes, assigning them the tax effects that would reasonably correspond to the transactions that would have been carried out to obtain the expected economic benefit.

The provision also establishes a rebuttable presumption that a transaction lacks a business purpose when the quantifiable economic benefit is lower than the tax benefit obtained.

Cross-Border Transactions

In cross-border transactions, the identification of abusive arrangements is further supported by several specific anti-avoidance mechanisms. First, Articles 179 and 180 of the MITL require that transactions between related parties be conducted in accordance with the arm's length principle, meaning that a deviation from arm's length pricing may constitute an indicator of base erosion or artificial profit shifting.

Second, preferential tax regime rules established in Articles 176 to 178 of the MITL aim to prevent the

artificial deferral or diversion of profits to low-tax jurisdictions.

Finally, Article 28, section XXIII of the MITL denies the deductibility of certain payments made to related parties or under structured arrangements when the corresponding income received by the related party is subject to a preferential tax regime, including situations involving hybrid structures.

Principal Legal Indicators of Tax Abuse

In summary, the principal legal indicators used to identify abusive tax arrangements include:

- the absence of a valid business purpose under Article 5-A of the FFC;
- the lack of economic substance or material capacity in documented transactions;
- non-compliance with the arm's length principle in related-party transactions; and
- the use of structures involving low-tax jurisdictions or hybrid arrangements.

5.2 Anti-Avoidance Mechanisms

The Mexican legal framework includes both general and specific anti-avoidance mechanisms aimed at addressing tax fraud, evasion and aggressive tax planning, provisions primarily established in the FFC and the MITL.

General Anti-Avoidance Rule (GAAR)

The GAAR, contained in Article 5-A of the FFC, allows the tax authorities, within the exercise of their audit powers, to presume that certain legal acts lack a business purpose and their tax consequences can therefore be recharacterised according to the economic benefit reasonably expected by the taxpayer.

Importantly, this provision does not invalidate the legal act itself, but rather allows the tax authorities to redefine its tax effects for the purpose of determining the appropriate tax treatment.

Specific Anti-Avoidance Rules (SAARs)

In addition to the GAAR, Mexican tax law includes specific anti-avoidance rules (SAARs) designed to address types of tax planning structures, especially in a cross-border context.

For example, in interest payments the following SAARs apply:

Interest deduction limitation (earnings-stripping rule)

Pursuant to Article 28, section XXXII of the MITL, the deductibility of net interest expense is limited to 30% of the taxpayer's adjusted taxable profit (tax EBITDA). Net interest exceeding this threshold is non-deductible in the relevant fiscal year, although it may generally carry forward for up to ten years, subject to certain conditions.

Thin capitalisation rules

Under Article 28, section XXVII of the MITL, interest paid on debt contracted with foreign related parties is non-deductible to the extent that the taxpayer's debt-to-equity ratio exceeds 3:1.

Non-deductibility of payments to low-tax jurisdictions and hybrid structures

In accordance with Article 28, section XXIII of the MITL, payments made to related parties, or under structured arrangements, are non-deductible when:

- such income is subject to a preferential tax regime;
- the payment gives rise to a hybrid mismatch, resulting in non-taxation or double deduction; or
- the income is not effectively subject to taxation abroad.

The Transfer Pricing Regime

The transfer pricing regime, primarily set forth in Articles 179 and 180 of the MITL, requires taxpayers engaged in transactions with related parties to determine their taxable income and allowable deductions based on the arm's length principle (prices or consideration that would have been agreed upon by independent parties in comparable transactions).

These rules represent the primary mechanism for preventing artificial profit shifting in cross-border related-party transactions.

Preferential Tax Regime Rules

Under Article 176 of the MITL, income obtained through foreign entities or legal arrangements subject

to low taxation may be treated as income derived from preferential tax regimes.

Income is considered subject to a preferential tax regime when it is either not taxed abroad or taxed at an effective rate lower than 75% of the tax that would have been payable in Mexico. In such cases, the tax-resident taxpayer must recognise the income in the fiscal year in which it is generated, in proportion to its direct or indirect participation in the foreign entity, even if the income has not been distributed.

Additionally, Article 178 of the MITL establishes specific reporting obligations, including the submission of an annual informative return regarding income derived from preferential tax regimes.

This regime is complemented by Article 28, section XXIII of the MITL, which denies the deductibility of certain payments made to related parties or under structured arrangements when the corresponding income is subject to a preferential tax regime. This rule operates as a specific anti-hybrid and anti-base-erosion mechanism in international tax structures.

Presumed Non-Existence of Transactions

Another significant anti-avoidance mechanism is contained in Article 69-B of the FFC, which allows the tax authorities to presume the non-existence of transactions documented through tax invoices when the issuer lacks the assets, personnel, infrastructure or material capacity necessary to perform the activities or services described.

Taxpayers identified under this procedure may be included in a public list of entities issuing simulated invoices, published by the SAT and in the Official Gazette, making this provision one of the most visible tools used to combat invoice-based tax evasion schemes.

Reportable Tax Schemes (Mandatory Disclosure Rules)

Mexico also operates a mandatory disclosure regime for reportable tax schemes, established in Articles 197 to 202 of the FFC.

Article 197 identifies tax advisers who are required to disclose reportable arrangements, while Article 198 provides that in certain circumstances the disclosure obligation falls on the taxpayer itself.

These provisions require the disclosure of tax arrangements that may generate a tax benefit in Mexico and that have certain characteristics associated with potential tax avoidance risks.

5.3 Blacklists and Non-Cooperative Jurisdictions

Mexico does not maintain a formal blacklist of non-cooperative jurisdictions comparable to those adopted by certain international organisations.

Instead, it relies primarily on the preferential tax regime (*regímenes fiscales preferentes*, or REFIPRES) framework, provided by Articles 176 to 178 of the MITL, which identifies income derived from low-tax jurisdictions and operates through a substance-based, case-by-case analysis of foreign income.

Under such framework, income obtained through foreign entities or legal arrangements is considered subject to a preferential tax regime when it is: (i) not subject to taxation abroad; or (ii) subject to an income tax rate lower than 75% of the tax that would have been payable in Mexico on the same income.

This determination is made on a case-by-case analysis, requiring a comparison between: (i) the effective tax burden in the foreign jurisdiction; and (ii) the Mexican income tax that would have been due under domestic rules.

In such cases, a taxpayer must include the income in its taxable base in the year in which it is generated, proportional to its direct or indirect participation in the foreign entity receiving the income, regardless of whether the income has been distributed.

For this purpose, the taxpayer must determine the taxable result of the foreign entity under domestic tax rules, to determine the taxable base and calculate the corresponding tax liability.

In addition, taxpayers must comply with specific reporting obligations, including the filing of an informative return in February of each year reporting income obtained from preferential tax regimes during the preceding fiscal year.

This approach is aligned with an effective taxation test rather than a jurisdictional blacklist.

5.4 Reporting Obligations and Disclosure Regimes

National law combines traditional reporting obligations with mandatory disclosure regimes designed to detect and prevent tax evasion and tax avoidance.

Related-Party Reporting

Under Article 76 of the MITL, taxpayers must maintain and submit information regarding transactions carried out with foreign related parties.

Furthermore, Article 76-A of the MITL introduced the obligation to complete master file, local file and country-by-country reports for certain multinational groups, in line with Action 13 of the OECD BEPS Project.

Preferential Tax Regime Reporting

As previously discussed, Article 178 of the MITL requires taxpayers to file an informative return in February of each year reporting income generated through preferential tax regimes during the preceding fiscal year, whether obtained directly or through foreign entities.

Reportable Tax Schemes (Mandatory Disclosure Rules)

Mexico also operates a mandatory disclosure regime for reportable tax schemes, established in Articles 197 to 202 of the FFC.

Under this regime, certain tax arrangements must be disclosed to the tax authorities when they generate, or are expected to generate, a tax benefit in Mexico and exhibit specific characteristics associated with potential tax avoidance risks.

Pursuant to Article 199 of the FFC, a reportable tax scheme is defined as any arrangement that produces or may produce a tax benefit in Mexico, and that falls within a set of predefined characteristics, which among other things includes:

- arrangements that avoid the exchange of financial information;
- mechanisms to prevent the identification of the ultimate beneficiary of income or assets;
- transactions involving loss transfers or the use of tax attributes to reduce the tax base;
- hybrid or cross-border structures that generate double non-taxation; and
- arrangements that recharacterise income or exploit mismatches in tax treatments between jurisdictions.

Pursuant to Article 197 of the FFC, the obligation to disclose generally falls on tax advisers who design, promote, organise or implement the reportable scheme. However, pursuant to Article 198 of the FFC, the obligation may shift to the taxpayer in certain circumstances, including when:

- the adviser is not required to disclose;
- the adviser is located abroad; or
- legal privilege or confidentiality rules apply.

Reportable schemes must be disclosed generally within 30 days from the date on which the scheme is made available or implemented, depending on the nature of the arrangement.

5.5 Role of Tax Authorities and Enforcement Measures

Audit Powers

Tax authorities may exercise audit powers to verify taxpayers' compliance with tax obligations. These powers include:

- on-site tax audits conducted at the taxpayer's registered tax domicile;
- desk audits requiring the taxpayer to provide documentation and information at the tax authority's offices; and
- electronic audits carried out based on information contained in the tax authority's electronic databases.

Recharacterisation of Transactions

Tax authorities may also apply Article 5-A of the FFC to recharacterise transactions lacking a business purpose and Article 69-B of the FFC to presume the non-existence of transactions supported by tax invoices when the issuer lacks sufficient economic substance.

Furthermore, the tax authorities may determine the simulation of legal acts for tax purposes and reclassify them accordingly, particularly in the context of related-party transactions and transfer pricing adjustments. In such cases, the authorities may recharacterise transactions according to their true economic substance, assigning the tax consequences that would reasonably correspond to the transaction capable of generating the expected economic benefit.

Under Article 69-B of the FFC, the tax authorities may presume the non-existence of transactions documented through electronic tax invoices when the issuing taxpayer lacks the assets, personnel, infrastructure or material capacity required to carry out the activities or services described in such invoices.

6. Penalties and Sanctions

6.1 Tax Penalties

Penalties are primarily established in the FFC and the MITL.

The FFC

Under the FFC, several administrative penalties are established, including monetary fines for the failure to comply with formal tax obligations, for example failure to:

- file informative returns concerning related-party transactions;
- report payments made to foreign entities; or
- comply with reporting obligations related to preferential tax regimes.

The FFC also provides fines in cases of late payment or omission of taxes, and in certain circumstances the tax authorities may impose administrative measures such as the restriction or cancellation of the digital certificate required to issue electronic tax invoices. In addition, it establishes tax crimes, including tax fraud and equivalent tax fraud offences, which may result in criminal sanctions including imprisonment and monetary penalties.

The MITL

The MITL also provides specific consequences in the context of international transactions. For example, if transactions between related parties are not conducted at arm's length, the tax authorities may recharacterise the transactions according to their economic substance and determine the taxable profits that would reasonably have been obtained between independent parties.

Similarly, under the preferential tax regime, income obtained through foreign entities subject to low taxation must be recognised in the fiscal year in which it is generated, in proportion to the taxpayer's direct or indirect participation, even if such income has not been distributed.

For these purposes, the taxable result of the foreign entity must be determined in accordance with domestic tax rules, calculating the corresponding tax using the applicable domestic tax rate.

Finally, national tax law also allows the tax authorities to deny treaty benefits under double taxation agreements when substantive requirements are not satisfied, such as the existence of a valid business purpose or beneficial ownership of the income.

Sanctions

Administrative sanctions are imposed and enforced by SAT, while criminal offences are investigated by the Federal Public Prosecutor's Office and adjudicated by the criminal courts.

6.2 Criminal Penalties

Article 108 of the FFC establishes tax fraud offence, which is committed when a person, through deception or by taking advantage of errors, wholly or partially omits the payment of a tax or obtains an undue benefit to the detriment of the federal treasury.

The applicable penalties vary depending on the amount of tax evaded but may include:

- imprisonment (three months to nine years); and
- monetary fines.

These penalties may be increased in the presence of aggravating circumstances such as:

- failure to withhold or remit taxes that were collected on behalf of third parties;
- the simulation of legal acts or transactions for tax purposes; and
- the use of false invoices to reduce taxable income.

In addition, Article 109 of the FFC regulates equivalent tax fraud offence, through which the same penalties applicable to tax fraud may be imposed on individuals who, for example:

- report false deductions or reduce taxable income in tax returns;
- improperly benefit from a tax subsidy or incentive; or
- fail to file mandatory tax returns for more than 12 months when such returns are required to be filed on a final basis.

6.3 Interaction Between Tax and Criminal Procedures

Pursuant to Article 93 of the FFC, when tax authorities become aware of facts that may constitute a criminal tax offence, they are required to notify the Federal Public Prosecutor's Office and provide the documentation and evidence collected during the administrative proceedings.

The investigation and prosecution of tax crimes therefore fall within the jurisdiction of the Federal Public Prosecutor's Office, while criminal penalties are imposed by the competent criminal courts. Importantly, the Mexican legal system follows a principle of independence between administrative and criminal proceedings. Accordingly, tax audits and administrative determinations of tax liabilities are conducted independently from criminal investigations and prosecutions; therefore, one does not necessarily depend on the outcome of the other.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Mexico participates in a broad range of international legal instruments aimed at facilitating administrative co-operation in tax matters, including mechanisms for exchange of information, mutual assistance and co-ordinated efforts to prevent base erosion and profit shifting.

Most Relevant Instruments

Multilateral Instrument (MLI)

This aims to:

- prevent the abuse of tax treaties;
- eliminate tax avoidance through treaty structures;
- introduce measures designed to discourage BEPS practices; and
- improve the efficiency of dispute resolution mechanisms.

Double taxation treaties

Most of these include provisions on exchange of information and administrative co-operation.

The relationship between the MLI and bilateral tax treaties can be summarised as follows: (i) both instruments co-exist and share the same legal nature under international law; and (ii) where potential conflicts arise, they must be resolved through the interpretative mechanisms and conflict clauses established under treaty law.

In practice, the application of international tax rules generally follows a three-step approach:

- analysis under domestic tax law;
- analysis under the relevant double taxation treaty; and
- analysis under the MLI, where applicable.

The Supreme Court of Justice has also clarified that the taxable events and tax rates applicable within the national legal system are established in domestic tax law, particularly the MITL. Accordingly, tax treaties do not create tax obligations, but rather determine which contracting state has the right to tax a given category

of income and establish limitations on domestic taxation.

Therefore, when applying a tax treaty in conjunction with domestic law, the following steps generally apply:

- the taxpayer must demonstrate tax residence in one of the contracting states;
- the taxable event must first be determined under domestic law;
- the applicable treaty provision must then be identified; and
- if the treaty provides a maximum withholding tax rate lower than the domestic rate, the treaty rate may be applied directly by the withholding agent.

Country-by-Country Reporting Multilateral Competent Authority Agreement

On 27 January 2016, Mexico signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbCR).

This agreement facilitates international tax transparency and the exchange of information between tax authorities, and its implementation within domestic law is aligned with OECD BEPS Action 13, which concerns transfer pricing documentation and country-by-country reporting.

7.2 Exchange of Information Clauses in Tax Agreements

Mexico participates in the Common Reporting Standard (CRS) developed by the OECD for the automatic exchange of financial account information between tax administrations.

Under the CRS framework, financial institutions annually report information regarding financial accounts held by foreign tax residents, which is automatically exchanged with the tax authorities of participating jurisdictions.

Mexico also exchanges information through the CbCR framework.

In addition, domestic legislation and international agreements also allow for spontaneous exchange of information, where relevant information discovered during a tax audit may affect taxation in another jurisdiction, as well as the exchange of information upon request.

These exchanges are conducted in accordance with international agreements such as tax treaties (in particular Article 26) and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

In particular, exchange of information upon request (EOIR) operates through a formal procedure whereby the competent authority of a foreign jurisdiction submits a specific and justified request to the competent Mexican authority, demonstrating that the requested information is foreseeably relevant for the administration or enforcement of its domestic tax laws, in line with the standard set forth in Article 26 of the OECD Model Tax Convention.

Upon receipt of such request, SAT is empowered to obtain the requested information by exercising its domestic audit and information-gathering powers, including those provided under Article 42 of the FFC, which allow the authority to request information from taxpayers, financial institutions and third parties.

At the domestic level, the exchange of taxpayer information is further supported by Article 69 of the FFC, which, while establishing the general principle of tax secrecy, expressly permits the disclosure of such information when required under international agreements to which Mexico is a party.

The entire process is subject to strict confidentiality and use limitations, ensuring that the exchanged information is used exclusively for tax purposes and in accordance with the applicable treaty provisions.

7.3 Other Forms of International Tax Collaboration

Although Mexico does not currently participate in the OECD's International Compliance Assurance Programme (ICAP), it does participate in other forms of multilateral tax co-operation.

In particular, tax authorities may conduct simultaneous or joint tax audits with other jurisdictions in cases involving multinational enterprises or cross-border

transactions. These activities are typically supported by international legal instruments such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and bilateral tax treaties containing provisions on exchange of information and administrative co-operation.

Also, as a member of the OECD, Mexico also actively participates in international working groups and forums on tax administration, exchange of information and the development of international tax standards.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Mexico operates a mutual agreement procedure (MAP) framework under its tax treaties. Therefore, the national tax administration has issued a specific administrative procedure for requesting the initiation of a MAP under a double taxation treaty. This procedure is described in administrative form 102/CFF, which is included in Annex 2 of the Miscellaneous Tax Resolution for 2026.

The procedural requirements and legal basis for the MAP are provided in both the FFC and the MITL, as well as in the relevant tax treaties.

8.2 Application Deadlines

The deadline for submitting a MAP request is primarily determined by the provisions of the relevant double taxation treaty, which typically follow Article 25 of the OECD Model Tax Convention and provide a time limit generally three years from the first notification of the action that resulted in taxation not in accordance with the treaty.

This treaty based time limit is expressly recognised in domestic administrative provisions, particularly in Rule 2.1.29 of the Miscellaneous Tax Resolution and the corresponding Form 102/CFF contained in its Annex 2.

8.3 Mandatory Binding Arbitration

From an international tax perspective, mandatory arbitration is not generally available in Mexico.

Mexico has not adopted arbitration clauses as a standard feature in its double taxation treaties, and therefore disputes arising under the MAP are typically resolved through negotiations between competent authorities, without recourses to binding arbitration mechanisms.

At a domestic level, however, Mexican law provides several alternative dispute resolution mechanisms, which, while not equivalent to arbitration, aim to facilitate the resolution of tax controversies and include:

- Administrative Conclusive Agreements – an ADR mechanism that allows taxpayers to reach an agreement with the tax authorities, during a tax audit, in order to regularise their tax situation before a final determination is issued.
- The General Law on Alternative Dispute Resolution Mechanisms (*Los Mecanismos Alternativos de Solución de Controversias* or MASC) – enacted in Mexico in 2024, this introduces mechanisms such as negotiation, mediation and conciliation in administrative matters.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Under Article 34 of the FFC, tax authorities may issue binding rulings regarding the methodology used to determine transfer prices or the amount of consideration in transactions between related parties, provided that the taxpayer submits the information and documentation necessary for the authorities to evaluate the request.

These rulings may be made conditional upon the taxpayer demonstrating that the transactions covered by the agreement are conducted at arm's length, consistent with the prices or margins that would have been agreed upon by independent parties in comparable transactions.

Such ruling may have effect:

- in the tax year in which the request is filed;
- in the immediately preceding tax year; and
- for up to three subsequent tax years.

Following a 2022 tax reform, legal entities operating under an IMMEX tax incentive programme are no longer allowed to request or renew advance pricing agreements (APAs) as a transfer pricing compliance mechanism. Instead, they must comply with Safe Harbour rules, which have become the exclusive compliance framework for maquilas (foreign-owned manufacturing plants in Mexico).

9.2 Other Mechanisms

From an international tax perspective, Mexico does not currently offer formal programmes aimed at obtaining tax certainty that are comparable to the co-operative compliance frameworks or enhanced engagement models implemented in other jurisdictions.

However, at the domestic level, Mexican law provides certain mechanisms that may contribute to tax certainty, particularly through the possibility of obtaining advance rulings from the tax authorities.

Taxpayers may submit binding consultations to SAT regarding the interpretation and application of tax provisions to specific factual situations. These rulings are generally binding on the tax authorities with respect to the requesting taxpayer, provided that the facts presented are accurate and complete.

Notably, such rulings are not subject to appeal, meaning that taxpayers cannot challenge their content through administrative or judicial means. As a result, while they may provide a degree of certainty, they do not constitute a negotiated or co-operative compliance mechanism, nor do they involve ongoing engagement between taxpayers and the tax authorities.

Accordingly, Mexico's approach to tax certainty in international matters remains primarily rule-based and transactional, rather than based on continuous or co-operative relationships between taxpayers and the tax administration.

Trends and Developments

Contributed by:
Ángel Escalante, Gabriel Rojas, Uzziel Rodríguez and Daniel Colunga
Escalante & Asociados

Escalante & Asociados (E&A Legal) is a boutique tax law firm with a team of highly specialised practitioners, focused on tax controversy and non-contentious tax matters. Established in 2015 by its managing partner, Ángel Escalante Carpio, the firm operates from offices in Mexico City and Houston, Texas, providing strategic advice on complex domestic and cross-border tax matters, particularly in the Mexico–US corridor. The firm is recognised for its expertise in tax audits, administrative proceedings, and high-stakes tax litigation, as well as in international tax planning, restructuring, compliance, and AML matters, offering an integrated approach that combines technical sophistication with a strong business-oriented perspective. Its practice also covers foreign trade, real estate tax structuring, estate planning for HNW individuals, and double taxation issues. E&A Legal regularly represents clients in disputes before Mexican tax authorities and advises multinational and domestic companies on the design and implementation of robust tax structures to mitigate risks and support their long-term business objectives, including cross-border operations and intercompany transactions.

Authors



Ángel Escalante is the founding partner of E&A Legal, with more than 20 years of experience in tax controversy, including administrative proceedings, tax audits and litigation before Mexican authorities. His practice focuses on complex tax disputes, international taxation and matters involving foreign trade and anti-money laundering compliance. He holds law and accounting degrees, as well as a master's degree in tax law, and has completed advanced studies in international taxation. He is a member of the World Compliance Association, under which he co-ordinates the Tax Committee in Mexico, and the International Fiscal Association.



Gabriel Rojas is a partner at E&A Legal with more than ten years of experience in corporate tax and controversy, focusing on administrative proceedings, audits and disputes before Mexican authorities. His practice focuses on domestic and international tax matters, including cross-border structuring, foreign trade and tax incentive programmes such as IMMEX and PROSEC, as well as VAT and excise tax certifications. He regularly represents clients before the Mexican Tax Administration Service (SAT) and other regulatory bodies. Gabriel has completed a law degree and postgraduate studies in international tax law, including an Advanced LLM from the University of Amsterdam, and is a member of the International Fiscal Association.

Contributed by: Ángel Escalante, Gabriel Rojas, Uzziel Rodríguez and Daniel Colunga, **Escalante & Asociados**



Uzziel Rodríguez is a senior attorney with more than 20 years of experience in tax controversy and dispute resolution, particularly in matters linked to large-scale real estate, corporate and expansion projects. His practice at E&A Legal focuses on complex tax disputes, including matters involving regulatory scrutiny and multi-jurisdictional elements, and this is complemented by his experience in corporate law and compliance. He has worked in-house at organisations such as Walmart and Fibra Uno, where he led legal and contractual strategies and managed tax-related controversies. Uzziel holds a law degree from Escuela Libre de Derecho and has completed postgraduate studies in corporate and real estate law.



Daniel Colunga is an associate at E&A Legal, focusing on tax controversy, including administrative and constitutional tax litigation. He advises and represents clients in audits, investigations and disputes before Mexican authorities, including the Mexican Tax Administration Service (SAT), PRODECON and other regulatory bodies, as well as before administrative and constitutional courts. His practice centres on complex tax disputes and enforcement-related matters. Prior to joining E&A Legal, he worked at specialised tax law firms, where he gained experience in taxpayer defence. Daniel holds a law degree from Escuela Libre de Derecho and is a member of the International Fiscal Association.

Escalante & Asociados

Torre Altiva/Blvd Manuel Avila Camacho 138 Piso 8
Lomas de Chapultepec
Miguel Hidalgo
11000, Mexico City
Mexico

Tel: (+52) 55 8854 9587
Email: dmariscal@eyalegal.com
Web: www.eyalegal.com

Contributed by: Ángel Escalante, Gabriel Rojas, Uzziel Rodríguez and Daniel Colunga, **Escalante & Asociados**

In recent years, Mexico's international tax landscape has undergone a significant transformation, driven by a combination of OECD-led reforms (particularly the base erosion and profit shifting (BEPS) Project), increased audit activity by tax authorities, and structural economic developments such as nearshoring and supply chain reconfiguration.

These developments have resulted in a more substance-oriented, enforcement-driven and internationally aligned tax environment, in which traditional tax planning structures are subject to increasing scrutiny.

The following trends reflect the most relevant developments currently shaping tax practice in Mexico, particularly in cross-border scenarios.

Interest Deduction Limitations and Financial Structuring

One of the most significant developments in Mexican tax practice has been the strengthening of interest deduction limitation rules, reflecting Mexico's alignment with BEPS Action 4 (limiting base erosion involving interest deductions and other financial payments).

As a starting point, interest expenses must comply with general deductibility requirements under Mexican tax law, which requires that expenses be strictly indispensable for the taxpayer's business activity, duly supported by tax invoices, properly recorded in the accounting records, and effectively paid through authorised means.

Earnings-stripping rule

The most relevant provision is contained in Article 28, section XXXII of the Mexican Income Tax Law (MITL), which establishes an earnings-stripping rule. Under this rule, net interest expense is deductible only up to 30% of the taxpayer's adjusted taxable profit (tax EBITDA). Any excess interest is disallowed in the relevant fiscal year but may generally be carried forward for up to ten fiscal years, subject to certain limitations.

This rule applies broadly to both domestic and cross-border financing. It represents a shift from transactional analysis to a global limitation approach, as it considers the taxpayer's overall financial position rather than individual transactions.

Thin capitalisation rule

In parallel, Mexico maintains a thin capitalisation rule under Article 28, section XXVII of the MITL, which specifically targets related-party debt. This provision limits the deductibility of interest when the taxpayer's debt-to-equity ratio exceeds 3:1, effectively disallowing interest attributable to excess leverage. This rule is particularly relevant in multinational group structures where debt is concentrated in Mexican entities.

Limitations on deductions

Additionally, Article 28, section XXIII of the MITL introduces limitations on deductions in cases involving: (i) hybrid mismatch arrangements, where differences in tax treatment between jurisdictions result in double non-taxation; and (ii) payments to entities subject to preferential tax regimes.

Importantly, these rules do not operate in isolation but rather apply cumulatively, creating a complex framework in which multiple limitations may simultaneously restrict the deductibility of a single financing arrangement.

Layered limitation framework

From a practical perspective, these rules operate cumulatively, creating a layered limitation framework. Taxpayers must therefore analyse interest deductibility from several angles simultaneously, including:

- quantitative limitations (EBITDA test);
- structural limitations (thin capitalisation); and
- anti-avoidance provisions (hybrids and low-tax jurisdictions).

Mexican tax authorities have increasingly focused on intra-group financing arrangements, particularly in audits involving multinational groups. Areas of scrutiny include:

- whether the borrower has the capacity to assume and service the debt;
- whether the financing structure reflects a genuine business need; and
- whether the interest rate complies with the arm's length principle.

In many cases, the authorities have challenged financing arrangements on the basis that they lack economic substance or business purpose, particularly where debt appears to be artificially introduced to generate tax deductions.

As a result, taxpayers have begun to restructure financing models, moving towards:

- increased use of equity funding;
- more conservative leverage ratios; and
- enhanced documentation to support the commercial rationale of financing transactions.

In practice, this reflects a broader shift towards a substance-over-form approach, where legal structuring alone is no longer sufficient to sustain tax benefits.

Real Estate Investment and Nearshoring Dynamics

Mexico has emerged as a key destination for foreign direct investment in real estate, largely driven by nearshoring trends and the strategic relocation of manufacturing and logistics operations closer to North American markets.

This shift has resulted in a significant increase in demand including industrial and logistics infrastructure, particularly in northern and central regions, warehousing and distribution facilities; and commercial and hospitality developments linked to industrial expansion.

From a tax perspective, Mexico offers a relatively attractive framework for real estate investment, combining structural flexibility with specific tax incentives.

One of the most important features of the Mexican system is the widespread use of trusts (*fideicomisos*) as investment vehicles. Trusts are generally treated as tax transparent, meaning that income is attributed directly to the beneficiaries rather than taxed at the trust level. This allows investors to structure investments in a flexible manner while maintaining tax efficiency.

In addition, Mexico has developed a sophisticated market for real estate investment trusts (*Fideicomisos de Infraestructura y Bienes Raíces* or FIBRAs), which are publicly traded vehicles designed to facilitate investment in income-generating real estate.

FIBRAs offer several tax advantages, including:

- deferral of taxation upon contribution of assets;
- access to capital markets; and
- a single level of taxation at the investor level.

Recent government initiatives, particularly the "Infrastructure Investment Plan for Development with Well-being 2026–2030" programme, have further enhanced the attractiveness of real estate and infrastructure investment by introducing tax regimes for certain types of assets, including construction and infrastructure investments. The programme also outlines potential use of specialised funds and structures aimed at attracting institutional capital, reducing financing costs, and enhancing transparency standards.

Despite these advantages, real estate investments in Mexico involve a high degree of complexity due to the interaction between: (i) federal taxes (income tax and VAT); and (ii) local taxes, including property taxes and transfer taxes, which vary significantly across states and municipalities.

VAT treatment can be complex in cases involving mixed-use properties, where some activities are taxable, and others are exempt. This may result in non-creditable VAT, which can significantly impact project profitability.

Furthermore, real estate structures must carefully consider the potential creation of a permanent establishment (PE), particularly where foreign investors are involved in active management or development activities.

Under domestic law, a PE is deemed to exist when construction, installation, or related activities exceed a period of 183 days within a 12-month period. Notably, this threshold is broadened by rules that require the aggregation of time spent by subcontractors, significantly increasing the likelihood of triggering a PE.

Overall, while Mexico presents significant opportunities for real estate investment, it also requires a highly

structured and multidisciplinary approach, integrating tax, legal and operational considerations.

Substance, Materiality and Related-Party Transactions

A defining feature of the current Mexican tax environment is the increasing emphasis on economic substance and materiality, particularly in relation to related-party transactions.

General Anti-Avoidance Rule (GAAR)

This approach is anchored in the introduction of the General Anti-Avoidance Rule (GAAR) under Article 5-A of the Federal Fiscal Code (FFC), which allows tax authorities to disregard or recharacterise transactions that lack a valid business purpose and generate a tax benefit.

Transfer pricing rules

In addition, transfer pricing rules under Articles 179 and 180 of the MITL require that transactions between related parties be conducted in accordance with the arm's length principle, consistent with OECD standards.

Scrutiny of intercompany transactions

In practice, Mexican tax authorities have significantly increased their scrutiny of intercompany transactions, particularly those involving:

- place of effective management (POEM) and administrative services, where the benefit to the recipient is often questioned;
- royalties and licensing arrangements, especially in cases involving intangible assets with unclear ownership or value creation; and
- financial transactions, including loans and guarantees.

A key aspect is the concept of materiality, which requires taxpayers to demonstrate that transactions have a real economic impact and are not merely formal arrangements designed to achieve tax benefits.

This has led to a more substance-driven analysis, where tax authorities evaluate:

- whether the transaction would have been entered into by independent parties;
- whether it generates a measurable economic benefit; and
- whether it aligns with the functions, assets and risks (FAR analysis) of the entities involved.

This approach is closely aligned with OECD transfer pricing guidelines, particularly the emphasis on value creation and DEMPE functions (development, enhancement, maintenance, protection and exploitation) in relation to intangible assets.

In cross-border contexts, this has resulted in increased challenges to structures involving:

- low-substance entities in foreign jurisdictions;
- back-to-back arrangements; and
- centralised service or IP holding structures.

As a result, taxpayers are increasingly required to maintain adequate documentation and functional analyses, and to ensure that their structures reflect genuine economic activity.

Evolving Interpretation of "Business Activities"

Another important development in Mexican tax practice is the evolving interpretation of "business activities", which plays a central role in determining the tax treatment of cross-border income.

Under Articles 14 and 16 of the FFC, business activities are broadly defined to include commercial, industrial, financial and service activities, among others. This broad definition has allowed tax authorities to adopt an increasingly expansive interpretation of what constitutes business activity.

This concept is particularly relevant in the context of:

- the determination of business profits under tax treaties;
- the identification of a PE; and
- the classification of income as active or passive.

In recent years, Mexican tax authorities have adopted a more substance-oriented approach, focusing on the actual conduct of the taxpayer rather than formal

legal structures. This has led to the recharacterisation of passive income as business income, particularly where the taxpayer is actively involved in generating such income; a broader interpretation of dependent agent permanent establishments, particularly where local agents play a key role in contract negotiation or conclusion; and increased scrutiny of digital and remote business models, where economic presence may exist without a traditional physical footprint.

In practice, this is consistent with broader international developments, including the OECD's work on the digital economy and nexus rules, although Mexico has not fully implemented all aspects of these initiatives.

In practice, foreign investors must carefully assess:

- their level of activity in Mexico;
- the role of local personnel or intermediaries; and
- the risk of being deemed to carry out business activities in Mexico, thereby triggering tax liability.

Failure to properly assess these factors may result in the unexpected recognition of a taxable presence (PE) and the recharacterisation of income, with significant tax implications.

NORWAY



Law and Practice

Contributed by:
Thea Slethaug, Axel Bjørke, Sigbjørn Sørensen and Jarand Aarhus
Aider Legal

Contents

1. Sources and Principles p.318
1.1 Domestic Sources of International Tax Law p.318
1.2 Hierarchy of Sources p.318
1.3 OECD Model/United Nations Influence on Treaty Practice p.318
1.4 Multilateral Instrument p.319

2. Territoriality, Residence and Permanent Establishment p.319
2.1 General Principle of Territorial Taxation p.319
2.2 Tax Residence of Individuals p.319
2.3 Taxation of Resident Individuals p.319
2.4 Taxation of Non-Resident Individuals p.319
2.5 Tax Residence of Legal Entities p.320
2.6 Definition of Permanent Establishment p.320

3. Taxation of Cross-Border Income p.320
3.1 Income From Immovable Property p.320
3.2 Business Profits p.320
3.3 Passive Income p.320
3.4 Capital Gains p.321
3.5 Employment Income p.321
3.6 Other Income p.321

4. OECD/G20 Global Tax Reform p.322
4.1 Pillar One – Amount B p.322
4.2 Pillar One – Amount A p.322
4.3 Pillar Two p.322
4.4 Specific Features or Deviations of Pillar Two p.322
4.5 Digital Services Tax p.322

5. Anti-Avoidance and Anti-Evasion Measures p.322
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.322
5.2 Anti-Avoidance Mechanisms p.322
5.3 Blacklists and Non-Cooperative Jurisdictions p.323
5.4 Reporting Obligations and Disclosure Regimes p.323
5.5 Role of Tax Authorities and Enforcement Measures p.323

6. Penalties and Sanctions p.324
6.1 Tax Penalties p.324
6.2 Criminal Penalties p.324
6.3 Interaction Between Tax and Criminal Procedures p.324

7. Administrative Co-Operation p.324
7.1 Legal Framework for Administrative Co-Operation p.324
7.2 Exchange of Information Clauses in Tax Agreements p.325
7.3 Other Forms of International Tax Collaboration p.325

8. Mutual Agreement Procedures and Arbitration p.325
8.1 Availability and Legal Basis p.325
8.2 Application Deadlines p.325
8.3 Mandatory Binding Arbitration p.325

9. Dispute Prevention p.325
9.1 Advance Pricing Agreements p.325
9.2 Other Mechanisms p.325

Contributed by: Thea Slethaug, Axel Bjørke, Sigbjørn Sørensen and Jarand Aarhus, **Aider Legal**

Aider Legal is a full-service Norwegian business law firm with a clear focus on assisting both national and international companies with establishing and operating in Norway. The firm provides comprehensive legal support to clients across industries – from start-ups to multinational corporations, as well as Norwegian businesses expanding their operations. Aider Legal is a full-service Norwegian business law firm with a clear focus on assisting international and foreign companies establishing and operating in Norway. With offices in Oslo, Bergen, Stavanger and Trondheim, it is committed to delivering quality, perseverance and tailored legal solutions – your trusted partner and one-stop shop for doing business in Norway. Aider Legal was established through the merger of the Magnus Legal, Aider Lawyers and Strandenæs law firms, and is part of the Aider Group.

Authors



Thea Slethaug is senior manager and a lawyer at Aider Legal. She specialises in business law, with a focus on tax, corporate and property law for both Norwegian and international companies and individuals. Her expertise also includes contract law and corporate transactions. Thea assists several multinational clients with establishment in Norway and acts as a project manager for several clients ensuring compliance. Thea provides comprehensive assessments and provides advice on all matters related to tax and corporate law in Norway.



Axel Bjørke is a manager and lawyer at Aider Legal specialising in business law, with a particular focus on international tax and corporate law. He advises Norwegian and international clients on cross-border tax matters, corporate structuring and regulatory compliance, combining deep technical knowledge with a pragmatic, solution-oriented approach. Axel works extensively with companies at all stages, from establishment and structuring to ongoing operations in Norway, and is a trusted adviser for clients navigating complex international frameworks. Known for his clarity and commercial mindset, he helps clients translate intricate regulatory requirements into actionable, business-friendly solutions.



Sigbjørn Sørensen is a seasoned tax lawyer, partner and head of Aider Legal's Oslo office. With experience from both the public and private sectors, he has built a distinguished career dedicated to international tax. Sigbjørn combines deep technical insight with strategic perspective, advising clients on complex cross-border structures, transactions and regulatory matters. He is also a frequent contributor to the Norwegian Financial Times (Finansavisen), where he shares his expertise on current tax developments and policy issues. Known for his clarity, integrity and thought leadership, Sigbjørn is a trusted adviser and a driving force within the firm.



Jarand Aarhus is a highly regarded tax lawyer and manager at Aider Legal known for his sharp analytical skills and pragmatic advice. He advises Norwegian and international clients on complex corporate tax matters, restructurings, transactions and shareholder issues. Jarand combines deep technical expertise with a clear commercial mindset, ensuring that legal solutions support broader strategic objectives. Clients and colleagues alike value his precision, reliability, and ability to explain complicated tax rules in an accessible way.

Contributed by: Thea Slethaug, Axel Bjørke, Sigbjørn Sørensen and Jarand Aarhus, **Aider Legal**

Aider Legal

Lars Hilles gate 30,
5008 Bergen,
Norway

Tel: +47 55 29 99 00
Email: Contact.legal@aider.no
Web: aiderlegal.com



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Legislation

The primary source of Norwegian tax law is the Tax Act of 1999 (*skatteloven*), which governs the taxation of individuals and corporations. The Tax Administration Act of 2016 (*skatteforvaltningsloven)* regulates procedural matters, including assessments, appeals and penalties. The Withholding Tax Act (*skattebetalingsloven*) and various regulations issued under these acts also form part of the legislative framework.

For international tax matters specifically, Norway has enacted dedicated legislation implementing its treaty obligations and unilateral measures, including rules on controlled foreign corporations (CFCs), thin capitalisation and transfer pricing (primarily in the Tax Act).

Administrative Guidance

The Norwegian Tax Administration (*Skatteetaten*) publishes binding advance rulings, guidance notes and tax return instructions. The Tax Appeals Board (*Skatteklagenemnda*) issues decisions on disputed assessments. Although administrative guidance is not legally binding in the same way as legislation, it reflects the Tax Administration's interpretation of the law and is routinely applied in practice.

Case Law

Norwegian courts, including the Supreme Court (*Høyesterett*), play an important role in interpreting tax legislation. Key Supreme Court decisions on international tax issues – such as the treatment of permanent establishments (PEs), treaty interpretation and anti-avoidance – are considered authoritative.

Treaty Network

Norway has an extensive tax treaty network, with approximately 90 bilateral double tax treaties in force. Norway's treaties follow the OECD Model Tax Convention as a general template and cover most of its major trading partners.

1.2 Hierarchy of Sources

In Norway, domestic legislation takes precedence as a general rule. However, Norway applies a dualist approach to international law: international treaties do not automatically become part of Norwegian domestic law and must be incorporated through specific legislative acts.

Tax Treaties

Tax treaties are incorporated into Norwegian law by reference through the Double Tax Convention Act of 1949 (*Dobbeltbeskatningsavtaleloven*). Once incorporated, a tax treaty provision prevails over conflicting domestic tax legislation, as Norwegian courts consistently apply the principle that treaty obligations should be honoured. In practice, where a treaty applies, it may restrict Norway's right to tax even if domestic law would otherwise permit it.

OECD Guidelines and Commentary

The OECD Model Commentaries and Transfer Pricing Guidelines are not legally binding but are given considerable weight by Norwegian courts and the Tax Administration when interpreting treaties and domestic transfer pricing rules.

1.3 OECD Model/United Nations Influence on Treaty Practice

Norway generally follows the OECD Model Tax Convention in its treaty negotiations. The OECD Model

serves as the starting point for most of Norway's bilateral tax treaties.

1.4 Multilateral Instrument

Norway ratified the Multilateral Instrument (MLI), which entered into force for Norway on 1 November 2019.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Norway employs a residence-based system of taxation. Tax residents of Norway are subject to tax on their worldwide income and wealth. Non-residents are taxed only on income and wealth sourced in Norway.

Svalbard has a special tax regime with lower tax rates and its own tax rules. Jan Mayen and the Norwegian dependencies are generally treated as part of Norway for tax purposes, but specific rules may apply. The Norwegian continental shelf is not part of Norway's tax jurisdiction as defined in the Tax Act, which extends only to Norwegian territorial waters (12 nautical miles). However, activities on the continental shelf are subject to Norwegian taxation through separate legislation – most notably the Petroleum Tax Act of 1975 (*petroleumsskatteloven*), which governs the taxation of oil and gas exploration and production. For non-residents, tax liability for activities on the continental shelf is specifically provided for in the Tax Act. Companies engaged in petroleum activities on the shelf are subject to special petroleum taxation.

2.2 Tax Residence of Individuals

An individual becomes a tax resident of Norway under the Tax Act if they are considered domiciled (*bosatt*) in Norway. The key criteria are:

- *Physical presence:* An individual who stays in Norway for more than 183 days in any 12-month period, or more than 270 days over a 36-month period, is considered resident.
- *Domicile:* An individual who has established a permanent home in Norway is generally treated as resident, regardless of the number of days spent.

Please also note that Norwegian tax residence does not automatically end upon departure from Norway. An individual who emigrates must meet specific conditions, including (i) not using a dwelling in Norway and (ii) not exceeding 61 days in Norway in any income year during the emigration period.

The required duration of the period abroad depends on the length of the individual's prior residence in Norway:

- For individuals who have been tax resident in Norway for less than ten years prior to the year of emigration, tax residence ceases at the end of the first income year in which both conditions (i) and (ii) above are met.
- For individuals who have been tax resident in Norway for ten years or more prior to the year of emigration, tax residence does not cease until the expiry of the third income year following the year of departure, provided that both conditions (i) and (ii) above are satisfied for each of those three income years.

2.3 Taxation of Resident Individuals

Tax residents in Norway are, according to the Tax Act, subject to tax on their worldwide income, including employment income, business income, capital income and gains. Norway also imposes a net wealth tax on resident individuals.

However, the starting point might be moderated due to applicable tax treaties.

2.4 Taxation of Non-Resident Individuals

The starting point when it comes to taxation of non-residents is that they are taxed only on income with a Norwegian source and on wealth located in Norway such as properties and bank accounts. Note that an obligation to report the income and wealth is a requirement even if it is not taxable to Norway. The main categories of Norwegian-source income subject to taxation include:

- employment income earned in Norway;
- business income attributable to a PE in Norway;
- income from immovable property located in Norway; and

- certain passive income (dividends, interest, royalties) with a Norwegian source.

Employment Income

Non-resident employees working in Norway are subject to Norwegian tax on employment income for work performed in Norway. A pay-as-you-earn (PAYE) scheme applies to foreign workers, offering a simplified flat-rate taxation option.

Withholding Tax

Norway levies withholding tax on dividends paid to non-residents (see **3.3 Passive Income**).

2.5 Tax Residence of Legal Entities

A legal entity is tax resident in Norway if it is:

- incorporated under Norwegian law; or
- has its place of effective management in Norway.

The Tax Act was amended to introduce the "place of effective management" test with effect from 1 January 2019, aligning Norway's approach more closely with the OECD Model. An entity managed and controlled from Norway will generally be treated as a Norwegian tax resident, even if incorporated abroad.

Consequences of Residence

Resident companies are subject to Norwegian corporate income tax (22%) on their worldwide income, subject to applicable treaty provisions.

2.6 Definition of Permanent Establishment

The Norwegian tax authorities have in their internal procedures defined a PE as "a fixed place of business through which an undertaking's activities are wholly or partly carried out" with reference to the OECD Model Tax Convention.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Resident individuals and companies are taxed on rental income and gains from immovable property on a worldwide basis. Rental income is generally subject to the standard income tax rate of 22%. Gains on the sale of immovable property are included in ordinary income and taxed at the same rate, subject to certain exemptions (eg, the primary residence exemption).

Non-residents are subject to Norwegian tax on income derived from immovable property located in Norway, including rental income and capital gains. Tax treaties generally allocate the primary right to tax immovable property income to the state where the property is located (the situs state), which aligns with Norway's domestic approach.

3.2 Business Profits

Norwegian-resident companies pay corporate income tax at 22% on their net profits. The taxable base includes income from all sources worldwide, with deductions for ordinary business expenses.

Non-resident companies are taxed in Norway only on profits attributable to a Norwegian PE. The PE's profits are determined on an arm's length basis, as if it were a separate enterprise.

Norway operates a participation exemption (*fritaksmetoden*) for corporate shareholders, which broadly exempts dividends and capital gains on qualifying shareholdings from corporate income tax. However, 3% of dividends that are otherwise exempt under the participation exemption are treated as taxable income and are subject to 22% corporate income tax. This 3% income inclusion does not apply to dividends received by companies within the same group.

This generally applies to Norwegian companies holding shares in other Norwegian or EEA-resident companies. Dividends from companies outside the EEA, or from low-tax jurisdictions, might not qualify.

3.3 Passive Income

Dividends

- *Resident companies:* Dividends received are generally exempt under the participation exemption (see **3.2 Business Profits**).
- *Resident individuals:* Dividends are subject to tax at an effective rate of 37.8%.
- *Non-residents:* Norway imposes a withholding tax of 25% on dividends paid to non-residents. This rate is frequently reduced under bilateral tax treaties, commonly to 5–15%, and typically 0–15%

in the case of dividends paid between parent and subsidiary companies. No withholding tax applies to dividends paid to corporate shareholders qualifying under the participation exemption (EEA-resident companies satisfying anti-abuse conditions).

Interest

Norway does not currently levy a general withholding tax on interest paid to non-residents under domestic law, though thin capitalisation and transfer pricing rules may affect the deductibility of interest on related-party loans.

Royalties

Norway introduced a withholding tax on royalties and certain lease payments (for IP and certain assets) paid to related parties in low-tax jurisdictions, effective from 2021. The rate is 15%. Tax treaties may reduce this rate.

3.4 Capital Gains

Residents

Capital gains are included in ordinary income and taxed at 22% for companies and at an effective rate of 37.8% for individual shareholders on gains from shares. Gains from sales of other assets (e.g., real property) are taxed at 22%.

Non-Residents

Non-residents are generally not subject to Norwegian capital gains tax on the disposal of shares in Norwegian companies unless the gain is attributable to a Norwegian PE. However, gains on immovable property located in Norway are taxable in Norway.

Exit Taxation

Norway has exit tax rules for individuals who emigrate. Unrealised gains on shares and other assets are subject to tax upon emigration, though payment may be deferred under certain conditions (including under EU/EEA law requirements). Following recent legislative changes, the exit tax rules have been significantly tightened.

3.5 Employment Income

General Taxation

Employment income earned by residents is subject to income tax and social security contributions. The combined marginal tax rate on employment income can reach approximately 47.4% for the highest income brackets.

Short-Term Assignments and Cross-Border Employment

- Non-residents working in Norway are taxed on income for work performed in Norway, subject to treaty relief.
- Norway has the PAYE scheme for foreign employees, offering a simplified flat-rate option.
- The 183-day rule in most Norwegian tax treaties means that employees on short-term assignments may be exempt from Norwegian tax if they are present in Norway for no more than 183 days in a 12-month period and their remuneration is paid by a non-Norwegian employer without a Norwegian PE.

Remote Working

Norway has not enacted specific legislation exclusively addressing remote working by cross-border employees. However, existing PE and employment income rules apply. There is growing awareness of the risk that remote work may create a PE for a foreign employer in Norway if a home office is used regularly and habitually for the employer's business. The Tax Administration has provided some guidance on this issue, and it remains a developing area.

3.6 Other Income

Petroleum Income

Norway has a special petroleum tax regime for companies engaged in oil and gas exploration and production on the Norwegian continental shelf. The ordinary corporate tax rate of 22% applies, plus a special petroleum surtax of 56%, resulting in a combined marginal tax rate of 78%. Generous uplift and investment deduction rules apply to mitigate the burden.

Shipping Income

Qualifying Norwegian shipping companies may elect to participate in a tonnage tax regime, under which shipping profits are effectively exempt from ordinary corporate income tax. Instead, a small annual tonnage-based tax applies. This is a significant deviation from the OECD Model approach, which does not specifically address preferential shipping regimes.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Norway has not enacted domestic legislation implementing Amount B. Norway's general transfer pricing framework continues to be based on the arm's length principle under the Tax Act and the OECD Transfer Pricing Guidelines. However, Norway has committed to accept the use of Amount B by "covered jurisdictions", as defined in the OECD's "Statement on the definition of covered jurisdiction for the Inclusive Framework political commitment on Amount B".

4.2 Pillar One – Amount A

No domestic legislation has been enacted implementing Amount A. Norwegian authorities have not signalled a unilateral implementation timetable.

4.3 Pillar Two

Norway has implemented the Pillar Two global minimum tax through the Act on Supplementary Tax of 2024 (*Lov om suppleringsskatt*), effective for financial years beginning on or after 1 January 2024.

The rules introduced the Income Inclusion Rule and a Qualified Domestic Minimum Top-Up Tax for groups with consolidated revenue of at least EUR750 million. The Undertaxed Profits Rule applied from 1 January 2025.

4.4 Specific Features or Deviations of Pillar Two

The Norwegian rules largely follow the OECD Pillar Two Model Rules.

The preparatory works for the Act on Supplementary Tax emphasised that the regime is intended to align closely with the OECD framework, and no significant deviations have since been introduced.

4.5 Digital Services Tax

Norway has not introduced a specific digital services tax. Instead, digital services are subject to the general tax framework, including corporate income tax and VAT.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax Fraud and Evasion

Norwegian law does not always draw sharp distinctions between tax fraud and evasion, but the key concepts are:

- *Tax fraud (skattesvik/skatteunndragelse):* Intentionally providing false or incomplete information to the tax authorities with the purpose of reducing tax liability. This is a criminal offence under the Tax Administration Act and the Penal Code.
- *Tax evasion:* Broadly overlaps with tax fraud in Norwegian law; it covers the deliberate concealment of income, assets or transactions from the tax authorities.

Tax Avoidance

Tax avoidance refers to arranging one's affairs in a manner that is technically within the law but circumvents the purpose of the legislation. Norwegian law addresses this through a statutory general anti-avoidance rule (GAAR) (*omgåelsesnormen/gjennomskjæringsregelen*), now codified in Section 13-2 of the Tax Act (effective from 2020).

Identifying Abusive Schemes

The GAAR applies when:

- the primary purpose of a transaction is to obtain a tax benefit; and
- granting the tax benefit would be contrary to the purpose of the relevant tax rule.

Courts also look at the substance of transactions, the commercial rationale and whether the structure is artificial.

5.2 Anti-Avoidance Mechanisms

Norway employs a range of specific anti-avoidance measures:

- *GAAR:* Codified in Section 13-2 of the Tax Act, applicable across all transactions.

- *Transfer pricing rules:* Sections 13-1 and following of the Tax Act require related-party transactions to be conducted on arm's length terms. Norwegian rules are closely aligned with the OECD Transfer Pricing Guidelines.
- *CFC rules (NOKUS):* Norwegian shareholders in CFCs located in low-tax jurisdictions are taxed on their proportionate share of the CFC's income on a current basis, regardless of distribution.
- *Thin capitalisation/interest limitation rules:* Norway limits the deductibility of net interest on related-party loans (and from 2019, also third-party loans, for larger groups), restricting deductions above a threshold relative to EBITDA.
- *Exit taxation:* Gains are taxed upon emigration or transfer of assets/functions outside Norway.
- *Withholding tax on royalties:* Applied to related-party payments to low-tax jurisdictions (since 2021).

Norway has implemented all four BEPS minimum standards, including country-by-country reporting (CbCR), mandatory disclosure rules and treaty changes through the MLI.

5.3 Blacklists and Non-Cooperative Jurisdictions

Norway's Low-Tax Jurisdiction List

Norway does not maintain a formal "blacklist" in the same manner as some other jurisdictions, but does operate a concept of low-tax jurisdictions (*lavskattland*) for purposes of the CFC rules. A jurisdiction is generally considered a low-tax jurisdiction if its corporate income tax rate is less than two-thirds of the Norwegian rate (ie, below approximately 15%).

Tax Consequences

Transactions with entities in low-tax jurisdictions may trigger:

- CFC taxation of Norwegian shareholders;
- withholding tax on royalty and certain lease payments;
- enhanced scrutiny of transfer pricing arrangements; and/or
- denial of the participation exemption for dividends from companies in low-tax jurisdictions outside the EEA.

Norway also follows EU and OECD guidance on non-cooperative jurisdictions, and may apply defensive measures consistent with those frameworks.

5.4 Reporting Obligations and Disclosure Regimes

Norway has implemented a comprehensive framework of reporting obligations to detect and prevent tax fraud, tax evasion and/or tax avoidance, including the following:

- Individual tax residents must submit a comprehensive tax return detailing global income and wealth.
- Companies are required to file detailed corporate tax returns.
- Companies are required to maintain accounting data in a standardised digital format (SAF-T), which streamlines tax audits and enables the detection of irregularities.
- Norwegian companies and Norwegian-registered branches (NUF) are required to register beneficial ownership.
- Norwegian companies are required to submit an annual shareholder register return (*aksjonærregisteroppgaven*) to the Tax Administration, reporting details of the company's shareholders, changes in share ownership, distributions of dividends and other relevant equity transactions during the income year.

5.5 Role of Tax Authorities and Enforcement Measures

The Tax Administration has broad powers to investigate suspected tax fraud and non-compliance:

- *Access to information and records:* The Tax Administration can require taxpayers, third parties and financial institutions to provide information and documents relevant to tax assessments.
- *Audits and inspections:* The Tax Administration may conduct desk audits and field audits of taxpayers.
- *Unannounced visits:* Tax authorities may conduct unannounced inspections of business premises, though certain procedural safeguards apply.
- *Searches:* In serious cases of suspected tax fraud, searches (*ransaking*) may be authorised by a court. These are typically carried out in co-ordination with

the police (see **6.3 Interaction Between Tax and Criminal Procedures**).
- *Information exchange:* The Tax Administration co-operates with foreign tax authorities through exchange of information mechanisms.

Serious cases of tax fraud are investigated by Økokrim, Norway's specialised agency for economic crime, which has dedicated resources for complex tax fraud investigations.

6. Penalties and Sanctions

6.1 Tax Penalties

The Tax Administration Act provides a framework for administrative penalties (*tilleggsskatt*) in cases of incorrect or incomplete information:

- *Standard additional tax:* 20% of the understated tax.
- *Enhanced additional tax:* 40% where the taxpayer has deliberately or grossly negligently provided incorrect information.
- *Aggravated additional tax:* 60% in the most serious cases of intentional evasion.

Penalties may be reduced or waived where the taxpayer voluntarily corrects errors (*frivillig retting*).

Administrative penalties are imposed by the Tax Administration. Decisions can be appealed to the Tax Appeals Board and ultimately to the courts.

6.2 Criminal Penalties

Criminal penalties for tax fraud are primarily governed by the Penal Code (*straffeloven*) and the Tax Administration Act:

- *Ordinary tax fraud:* Imprisonment of up to two years for intentionally or recklessly providing false information to the tax authorities.
- *Aggravated tax fraud:* Imprisonment of up to six years where the offence is particularly serious, considering factors such as the amount involved, planning, and abuse of a professional position.
- *Gross aggravated tax fraud:* In exceptional cases involving very large amounts or organised crime, sentences above six years may be imposed.

Criminal penalties may be imposed alongside administrative penalties, but Norwegian law contains safeguards against double punishment in line with the European Convention on Human Rights.

6.3 Interaction Between Tax and Criminal Procedures

The Tax Administration has an obligation to report serious suspected tax fraud to the police. In practice, cases involving large amounts of tax evasion, organised schemes or repeat offenders are routinely referred to the police or *Økokrim* for criminal investigation.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Multilateral Instruments

Norway participates in the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which provides a comprehensive framework for administrative co-operation, including exchange of information, simultaneous tax examinations, and assistance in tax collection.

EU/EEA Framework

As an EEA member (but not an EU member), Norway has implemented key EU Directives on administrative co-operation through the EEA Agreement, including provisions equivalent to the EU Directive on Administrative Cooperation in relation to automatic exchange of information.

Bilateral Treaties

Norway's bilateral tax treaties contain standard exchange of information articles. Many newer treaties follow the OECD Model Article 26, providing for exchange of information on request, spontaneous exchange and, in some cases, automatic exchange.

7.2 Exchange of Information Clauses in Tax Agreements

Norway participates in all major forms of information exchange, including the following:

- *On-request exchange:* Norway responds to requests from treaty partners for specific taxpayer information.
- *Spontaneous exchange:* Norway proactively shares information with foreign authorities when it believes information may be relevant, without a prior request.
- *Automatic exchange:* Norway participates fully in automatic exchange under CRS/AEOI (financial account information) and CbCR exchange. Norway also exchanges information on tax rulings under the OECD framework.

7.3 Other Forms of International Tax Collaboration

Norway is part of the OECD's International Compliance Assurance Programme.

Norway also participates in extensive Nordic tax co-operation. The Nordic Tax Treaty (which applies to Denmark, Finland, Iceland, Norway and Sweden) ensures equal treatment across the Nordic countries. The Nordic countries also co-operate through agreements on mutual assistance in tax matters, including exchange of tax information between the tax administrations. Furthermore, the Nordic Agreement on Collection of Taxes ("*nordisk trekkavtale*") enables cross-border assistance in the recovery and collection of tax claims between the Nordic states, strengthening enforcement against tax evasion and unpaid taxes.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Norway has an active Mutual Agreement Procedure (MAP) programme. The legal basis is found in the MAP articles (typically Article 25) of Norway's bilateral tax treaties, as well as the OECD/Council of Europe Multilateral Convention.

The Tax Administration handles MAP requests. Norway has committed to the BEPS Action 14 minimum standard on improving MAP effectiveness and has had its MAP programme peer-reviewed under the Inclusive Framework.

8.2 Application Deadlines

The deadline for submitting a MAP request depends on the applicable tax treaty. Most Norwegian treaties follow the OECD Model and provide a three-year deadline from the first notification of the action that results in taxation not in accordance with the treaty.

Some older Norwegian treaties may have shorter deadlines. Taxpayers are advised to check the specific treaty applicable to their situation, as deadlines are strictly applied.

8.3 Mandatory Binding Arbitration

Norway did not opt into mandatory binding arbitration under Part VI of the MLI. As a result, mandatory binding arbitration is generally not available under Norway's tax treaties unless a specific bilateral treaty provides for it.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Norway operates an advance pricing agreement (APA) programme administered by the Tax Administration. However, Norway does not offer unilateral APAs; the programme is limited to bilateral or multilateral APAs concluded with other countries. The legal basis derives primarily from applicable tax treaties containing a MAP provision based on Article 25 of the OECD Model Tax Convention, under which the competent authorities negotiate and conclude APAs regarding transfer pricing for cross-border related-party transactions.

9.2 Other Mechanisms

The Tax Administration issues binding advance rulings (*bindende forhåndsuttalelser* – BFU) on the tax consequences of planned transactions. These rulings are binding on the tax authorities if the transaction is carried out as described in the ruling application. They

are anonymised and published, providing guidance to other taxpayers.

Guidance and Informal Dialogue

In addition to formal rulings, the Tax Administration provides non-binding guidance through published guidelines and informational letters. For large and complex taxpayers, there is a degree of enhanced dialogue with the Tax Administration, particularly for those in the large taxpayers segment.

Trends and Developments

Contributed by:
Thea Slethaug, Axel Bjørke, Sigbjørn Sørensen and Jarand Aarhus
Aider Legal

Aider Legal is a full-service Norwegian business law firm with a clear focus on assisting both national and international companies with establishing and operating in Norway. The firm provides comprehensive legal support to clients across industries – from start-ups to multinational corporations, as well as Norwegian businesses expanding their operations. Aider Legal is a full-service Norwegian business law firm with a clear focus on assisting international and foreign companies establishing and operating in Norway. With offices in Oslo, Bergen, Stavanger and Trondheim, it is committed to delivering quality, perseverance and tailored legal solutions – your trusted partner and one-stop shop for doing business in Norway. Aider Legal was established through the merger of the Magnus Legal, Aider Lawyers and Strandenæs law firms, and is part of the Aider Group.

Authors



Thea Slethaug is senior manager and a lawyer at Aider Legal. She specialises in business law, with a focus on tax, corporate and property law for both Norwegian and international companies and individuals. Her expertise also includes contract law and corporate transactions. Thea assists several multinational clients with establishment in Norway and acts as a project manager for several clients ensuring compliance. Thea provides comprehensive assessments and provides advice on all matters related to tax and corporate law in Norway.



Axel Bjørke is a manager and lawyer at Aider Legal specialising in business law, with a particular focus on international tax and corporate law. He advises Norwegian and international clients on cross-border tax matters, corporate structuring and regulatory compliance, combining deep technical knowledge with a pragmatic, solution-oriented approach. Axel works extensively with companies at all stages, from establishment and structuring to ongoing operations in Norway, and is a trusted adviser for clients navigating complex international frameworks. Known for his clarity and commercial mindset, he helps clients translate intricate regulatory requirements into actionable, business-friendly solutions.



Sigbjørn Sørensen is a seasoned tax lawyer, partner and head of Aider Legal's Oslo office. With experience from both the public and private sectors, he has built a distinguished career dedicated to international tax. Sigbjørn combines deep technical insight with strategic perspective, advising clients on complex cross-border structures, transactions and regulatory matters. He is also a frequent contributor to the Norwegian Financial Times (Finansavisen), where he shares his expertise on current tax developments and policy issues. Known for his clarity, integrity and thought leadership, Sigbjørn is a trusted adviser and a driving force within the firm.



Jarand Aarhus is a highly regarded tax lawyer and manager at Aider Legal known for his sharp analytical skills and pragmatic advice. He advises Norwegian and international clients on complex corporate tax matters, restructurings, transactions and shareholder issues. Jarand combines deep technical expertise with a clear commercial mindset, ensuring that legal solutions support broader strategic objectives. Clients and colleagues alike value his precision, reliability, and ability to explain complicated tax rules in an accessible way.

Contributed by: Thea Slethaug, Axel Bjørke, Sigbjørn Sørensen and Jarand Aarhus, **Aider Legal**

Aider Legal

Lars Hilles gate 30,
5008 Bergen,
Norway

Tel: +47 55 29 99 00
Email: Contact.legal@aider.no
Web: aiderlegal.com



Norway as a Destination for International Project Investment: Tax and Compliance Considerations for International Businesses

With a stable regulatory framework, Norway is an attractive destination for international companies seeking large-scale project work. The country's government has both the political will and the financial capacity to invest heavily in infrastructure, energy and digital development. Public procurement alone is estimated to exceed NOK600 billion annually, and a significant proportion of this work is subcontracted – either entirely or in part – creating genuine opportunities for foreign specialists across a wide range of disciplines.

The sectors driving this investment are varied and substantial. Norway's ambition to upgrade its electricity grid, develop onshore and offshore wind capacity, expand its hydropower infrastructure and build data centre capacity – underpinned by an abundant supply of competitively priced renewable energy – generates a long-term pipeline of technically complex projects. Norway's road network, railway system, tunnels and public buildings similarly require constant investment and periodic major renewal, service and maintenance. For foreign companies with relevant expertise, the commercial case for pursuing Norwegian project work is compelling.

What makes Norway distinctive from an international tax perspective, however, is the complexity of the framework that applies to foreign companies and their employees once they begin working here. Norway has entered tax treaties with approximately 90 countries, and these treaties are the starting point for any analysis of a foreign company's Norwegian tax position. The applicable treaty, the nature of the contract, the duration of the project and the residence of both the employer and the individual employees will all determine what tax obligations arise – and the outcomes can differ substantially depending on these factors. Getting this analysis right before committing to a project is not optional. It is a commercial necessity.

Tax Treaties as the Foundation of the Analysis

Under Norway's domestic tax rules all foreign enterprises conducting business activities in Norway are in principle subject to Norwegian corporate tax at the current rate of 22%. However, where a relevant tax treaty exists, that treaty takes precedence and may provide full or partial relief from Norwegian corporate tax liability.

The general rule in a tax treaty is that a foreign enterprise becomes subject to Norwegian corporate tax only if it has a permanent establishment in Norway. If no permanent establishment exists, the foreign company's profits from its Norwegian activities are in principle taxable only in its home country. This makes the permanent establishment question central to tax planning for projects in Norway.

Norway's approximately 90 tax treaties are not uniform. While they follow the OECD Model Tax Convention in broad terms, the specific thresholds, definitions and carve-outs vary from one treaty to another. An assessment of tax liability must therefore be made specifically for each foreign enterprise, considering the precise terms of the treaty between Norway and the company's country of residence. A company that assumes its position is identical to that of a competitor

from a different country may find itself commercially exposed.

Permanent Establishment: The Thresholds That Determine Corporate Tax Liability

A permanent establishment can arise in several ways under Norwegian tax treaties. The most relevant for project companies are:

- a fixed place of business in Norway through which the business of the enterprise is wholly or partly carried on;
- a building site, construction project, installation project or assembly project that lasts for more than a specified period;
- a dependent agent in Norway who habitually exercises authority to conclude contracts on behalf of the enterprise; and
- petroleum-related activities on the Norwegian continental shelf exceeding a specified number of days.

For most foreign project companies, it is the construction and installation provision that is most immediately relevant. Under this provision, a project constitutes a permanent establishment, and accordingly triggers Norwegian corporate tax liability, if its duration exceeds the threshold period specified in the applicable treaty.

The key takeaway is that this threshold is relative to the treaty. For example, a Portuguese company carrying out an installation project in Norway will, under the Norway–Portugal tax treaty, become subject to Norwegian corporate tax once the project has lasted for more than six months. A German company carrying out an identical project will not reach the same threshold until the project has lasted for more than 12 months, as provided under the Norway–Germany tax treaty. The two companies are doing the same work in the same country, but their corporate tax exposure is entirely different as a result of treaty provisions.

This example illustrates why treaty analysis must be carried out at the outset of any project, before bids are submitted and contracts are signed. The duration of the project is often known or can be estimated at the tendering stage, and the treaty threshold should be a central input into both the tax structuring and the commercial pricing of the bid.

Where a permanent establishment does arise, Norwegian corporate tax applies to the profits attributable to the Norwegian permanent establishment. Tax losses may be carried forward indefinitely, which provides some comfort for companies in early phases of Norwegian operations. However, the existence of a permanent establishment also has significant consequences for the taxation of individual employees – as discussed below.

The Critical Distinction: Genuine Subcontracts vs Hired Labour Arrangements

At the onset of any project planning, a fundamental classification of the project for tax purposes should be made, as the difference between a genuine subcontract and a hired labour arrangement is key in determining tax treatment.

In a genuine subcontract, the foreign company takes responsibility for delivering a defined result – a completed installation, a finished structure or a specific service outcome. The foreign company manages its own personnel, bears the project risk and is responsible for the quality of the delivered work. In this scenario, corporate tax exposure is determined by the permanent establishment analysis described above, and individual employees may benefit from treaty protection in appropriate circumstances.

In a hired labour arrangement, the foreign company supplies personnel who work under the direction and control of the Norwegian client. The company is not delivering a result – it is supplying labour. The tax consequences in this scenario are significantly more adverse. Norway will levy income tax on an employee who is regarded as being hired out to a Norwegian tax-paying lessee, regardless of the duration of the stay and regardless of whether the foreign employer has a permanent establishment in Norway. The 183-day employee exemption that applies in the genuine subcontract scenario is simply not available, and the employee is tax liable to Norway from the first day of work.

The classification is not determined by what the contract is called – it is determined by how the arrangement operates in practice in accordance with substance over form considerations generally applied by the Norwegian Tax Administration. Norwegian tax authorities will look at who gives instructions to the workers, who bears the risk of defects or delays, and whether the foreign company is delivering personnel or a defined output. Contracts must be drafted with this analysis in mind, and the practical execution of the work must be consistent with the contractual classification. Getting this wrong – whether through careless drafting or inconsistent practice on site – can result in significant and unexpected tax liabilities for both the company and its employees.

Employee Taxation: A Three-Variable Analysis

The taxation of individual employees working in Norway on genuine subcontracts is determined by three factors in most tax treaties: the residence of the employee, the residence of the employing company, and the terms of the tax treaty between Norway and the relevant home country or countries. This three-variable analysis can produce outcomes that are initially counterintuitive but are of great practical importance for companies building international project teams.

The basic domestic rule is that individuals working in Norway become subject to Norwegian income tax from the first day of their Norwegian engagement. However, where a tax treaty applies, an employee may be exempt from Norwegian income tax if the following conditions are met: the employee is present in Norway for no more than 183 days in a 12-month period; the remuneration is paid by an employer who is not resident in Norway; and the remuneration is not borne by a permanent establishment that the employer has in Norway.

The first condition – the 183-day threshold – is straightforward in principle, though its calculation can be complex in practice. The second and third conditions introduce the employer's position into the analysis, and this is where the interaction between corporate-level and individual-level tax becomes directly relevant.

To illustrate, consider a French resident who is employed by a UK company and is sent to work on a project in Norway. The UK company's project is a service project with a duration of less than six months and therefore does not create a permanent establishment under the Norway–UK treaty.

In this scenario, the UK employer is not subject to Norwegian corporate tax, and one might expect the French employee to benefit from treaty protection given the conditions outlined above. However, the relevant treaty for the employee is not the Norway–UK treaty but the treaty between Norway and France in which the employee is a resident. In this scenario, the Norway–France tax treaty does not offer treaty protection to the employee as the relevant treaty requires that both employer and employee are domiciled in the same jurisdiction. As the employer in this scenario is domiciled in the UK and the employee in France, the employee will become subject to Norwegian income tax for Norwegian-sourced income, even though the UK employer does not have a Norwegian tax liability.

Now consider a situation in which a Polish national is employed in the same UK company. Under the Norway–Poland tax treaty, there is a specific provision that provides protection for the employee in the same circumstances. Accordingly, the Polish employee, doing the same work in Norway for the same duration, may be fully exempt from Norwegian income tax.

These examples demonstrate that the structure of international project teams – including which group entity employs the workers being sent to Norway – is a tax decision, not merely an organisational one. Decisions made at the HR and contract stages have direct and material tax consequences that must be modelled in advance.

It also follows that where a permanent establishment does arise for the employer – because a project exceeds the relevant treaty threshold – the employees lose their treaty-based exemption. The corporate-level and individual-level tax outcomes are connected: a permanent establishment at the employer level pulls the employees into Norwegian taxation as well. This interconnection must be built into project planning from the outset.

Contributed by: Thea Slethaug, Axel Bjørke, Sigbjørn Sørensen and Jarand Aarhus, **Aider Legal**

Structuring the Norwegian Presence: NUF or AS?

When a foreign company determines that it will have a significant or lasting presence in Norway – whether because a permanent establishment arises or because the company wishes to pursue multiple projects over time – it must decide how to structure that presence formally.

The most commonly used setup is the Norwegian branch of a foreign company, registered in Norway as a NUF (*norskregistrert utenlandsk foretak*). A branch is not a separate legal entity – it is part of the foreign parent company. All obligations and liabilities of the branch are therefore obligations of the parent. This makes the NUF a relatively straightforward and low-cost structure to establish, which is why it is the default choice for many foreign companies entering Norway for project-based work.

The alternative is to incorporate a Norwegian limited liability company (AS). The minimum share capital is NOK30,000 – a low threshold – and the AS is a separate legal entity with limited liability for its shareholders. For foreign groups with longer-term Norwegian ambitions, or where liability separation is commercially important, the AS may be the more appropriate structure.

From a tax perspective, an important advantage of operating through a Norwegian AS rather than a branch is access to the Norwegian participation exemption – known as "*fritaksmetoden*". Under this regime, a Norwegian AS that receives dividends from, or realises gains on the disposal of shares in, qualifying entities is generally exempt from Norwegian corporate tax on those receipts. This makes the Norwegian AS an effective intermediate holding setup within an international group structure, allowing profits to be accumulated and repatriated from Norwegian operations.

However, the participation exemption has important limitations. It applies in full to shareholdings within the EEA, but for non-EEA shareholdings, conditions apply – including minimum ownership thresholds and the requirement that the subsidiary is not resident in a low-tax jurisdiction. Furthermore, distributions from a Norwegian AS to a foreign parent shareholder may be subject to Norwegian withholding tax on dividends, currently levied at a statutory rate of 25% but typically reduced under applicable tax treaties to 5%, 10% or 15%, depending on the treaty in question. The withholding tax position must therefore be considered alongside the participation exemption when designing the group structure, as the two interact directly. A structure that is efficient at the Norwegian level may still give rise to withholding tax leakage on repatriation if the treaty position is not carefully analysed.

Many opt for a layered Norwegian structure in which a holding company sits beneath a foreign parent and holds shares in one or more Norwegian subsidiaries. Operational activity – including employees, contracts, machines, equipment, etc – is placed in a separate operating company. Where the group holds Norwegian real estate, the property can be placed in a separate property company, ring-fencing real estate assets from operational and commercial risk and vice versa. If a group controls more than 90% of the shares and votes in one or more subsidiaries, group contributions can be utilised to offset losses in one company against profits in another.

Planning for Departure: Exit Strategy

An exit strategy is frequently overlooked in the initial planning phase. Investors should account for the potential impact of Norwegian exit taxation upon the winding down of Norwegian operations. Norway levies tax on unrealised capital gains on certain financial assets when an AS ceases to be subject to Norwegian taxing jurisdiction. The rules primarily apply to shares in Norwegian or foreign companies, units in securities funds, partnership interests and employee stock options. For foreign companies that have built up Norwegian operations over the course of one or more projects, this can result in a substantial tax liability arising at the point of departure – even where no cash has been received.

The practical relevance is clear in the project context. A foreign company that has operated a Norwegian permanent establishment over a multi-year project, and that has accumulated depreciable assets, contractual positions or other value in Norway, will need to consider what happens when the project concludes and Norwegian operations are wound down. If assets

or functions are transferred back to the parent or to another group entity, and that transfer crosses the Norwegian border, exit tax analysis is required before any restructuring steps are taken.

Exit tax may also be relevant for individuals, particularly foreign management employees posted to Norway for a longer period. A person who has been tax resident in Norway and who holds shares or other assets at the time of departure may be subject to Norwegian exit tax on unrealised gains. Norway's rules in this area have been significantly tightened in recent years, and the interaction with the applicable tax treaty – which may or may not preserve Norway's right to tax gains after the individual has left – requires careful analysis on a case-by-case basis.

The recommendation for both companies and individuals is that exit planning must begin well before the exit. By the time a restructuring or departure is being implemented, the tax cost may already be crystallised. Planning – ideally at the point when the Norwegian structure is first being designed – can significantly affect the outcome and, in some cases, the exit tax liability can be deferred or mitigated through appropriate structuring.

Key Takeaways

For international businesses considering project work in or through Norway, the following points merit particular attention:

- Norway has tax treaties with approximately 90 countries, but each treaty is different. The permanent establishment threshold, the employee exemption conditions and the withholding tax rates on dividends all vary. The analysis must be carried out specifically for each company and each country of residence involved.
- The permanent establishment threshold for construction and installation projects varies by treaty. A project that creates a permanent establishment for a Portuguese company after six months may not create one for a German company until 12 months. This must be factored into bid pricing and project structuring from the outset.
- The taxation of employees depends on the residence of both the employee and the employing entity. The same individual, doing the same work in Norway, may be taxable or exempt depending on which group company employs them. These decisions must be made deliberately, not by default.
- The hired labour arrangement versus genuine subcontract distinction is fundamental. In a hired labour arrangement, employees are taxable in Norway from day one regardless of treaty protection. Contracts must be drafted and executed in a way that is consistent with genuine subcontract classification.
- Corporate and employee tax outcomes are linked. A permanent establishment at the employer level removes treaty protection for employees. Both levels of the analysis must be modelled together.
- The participation exemption makes a Norwegian AS attractive for group holding structures, but withholding tax on dividends paid to a foreign parent must be assessed against the applicable treaty.
- An exit strategy should be accounted for already at the point of entry, not when Norwegian operations are being wound down.

Conclusion

Norway offers international companies a long-term pipeline of well-funded, commercially attractive opportunities across the energy, infrastructure and digital sectors. The international tax framework applicable to foreign companies active in Norway is both intricate and may be far-reaching in its implications. Factors such as the relevant tax treaty, the contractual arrangements in place, the residence of the employer and the personal tax residence of each employee must all be weighed carefully – and this analysis should begin well before operations commence.

In Norway, the contract phase is the moment at which the tax position is determined. Companies that invest in proper international tax advice before they sign their first Norwegian contract will be far better placed to capture the opportunities this market offers – and to avoid the liabilities that insufficient planning can create.

PANAMA



Law and Practice

Contributed by:
Anna Cristina Valdés, Edgar Herrera, José Manuel Motta and Ramón Arias
Galindo, Arias & López

Contents

1. Sources and Principles p.335
1.1 Domestic Sources of International Tax Law p.335
1.2 Hierarchy of Sources p.336
1.3 OECD Model/United Nations Influence on Treaty Practice p.336
1.4 Multilateral Instrument p.336

2. Territoriality, Residence and Permanent Establishment p.336
2.1 General Principle of Territorial Taxation p.336
2.2 Tax Residence of Individuals p.336
2.3 Taxation of Resident Individuals p.336
2.4 Taxation of Non-Resident Individuals p.337
2.5 Tax Residence of Legal Entities p.337
2.6 Definition of Permanent Establishment p.337

3. Taxation of Cross-Border Income p.338
3.1 Income From Immovable Property p.338
3.2 Business Profits p.338
3.3 Passive Income p.339
3.4 Capital Gains p.339
3.5 Employment Income p.339
3.6 Other Income p.339

4. OECD/G20 Global Tax Reform p.339
4.1 Pillar One – Amount B p.339
4.2 Pillar One – Amount A p.339
4.3 Pillar Two p.340
4.4 Specific Features or Deviations of Pillar Two p.340
4.5 Digital Services Tax p.340

5. Anti-Avoidance and Anti-Evasion Measures p.340
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.340
5.2 Anti-Avoidance Mechanisms p.340
5.3 Blacklists and Non-Cooperative Jurisdictions p.340
5.4 Reporting Obligations and Disclosure Regimes p.341
5.5 Role of Tax Authorities and Enforcement Measures p.341

6. Penalties and Sanctions p.341
6.1 Tax Penalties p.341
6.2 Criminal Penalties p.341
6.3 Interaction Between Tax and Criminal Procedures p.342

7. Administrative Co-Operation p.342
7.1 Legal Framework for Administrative Co-Operation p.342
7.2 Exchange of Information Clauses in Tax Agreements p.342
7.3 Other Forms of International Tax Collaboration p.342

8. Mutual Agreement Procedures and Arbitration p.342
8.1 Availability and Legal Basis p.342
8.2 Application Deadlines p.343
8.3 Mandatory Binding Arbitration p.343

9. Dispute Prevention p.343
9.1 Advance Pricing Agreements p.343
9.2 Other Mechanisms p.343

Galindo, Arias & López (GALA) is a Panamanian full-service law firm with an over 55-year tradition of excellence and a commitment to providing legal services of the highest quality and ethical standards. The firm has built long-term relationships with a high-profile, local and international client base, with business interests in Panama and abroad. GALA stands out for its expertise in complex regulatory issues, local and cross-border transactions, complex asset and project financing transactions from highly regulated industries, and a stellar dispute resolution track record, servicing clients throughout Panama's key business sectors: aviation, energy, telecommunications, banking, finance, infrastructure, real estate, transportation and logistics, tourism and commerce.

Authors



Anna Cristina Valdés was promoted to partner at Galindo, Arias & López in January 2026. She has extensive experience in national and international tax law, advising both national and multinational companies on complex tax matters. Her practice includes the application of Panama's double taxation treaties, transfer pricing and general international taxation, as well as representing taxpayers before the Panamanian tax authority.



Edgar Herrera has been part of Galindo, Arias & López since 2004, specialising in domestic and international tax law. He combines deep expertise in immigration and tax law to advise prominent individuals, families and family-owned businesses on complex wealth management, asset restructuring and succession planning matters, allowing clients to preserve, manage and transfer wealth seamlessly across generations and jurisdictions. He is a recognised expert in the practical application of treaties to avoid double taxation, as well as a consultant and litigator in cases of international taxation and transfer pricing.



José Manuel Motta has been part of the Galindo, Arias & López team since September 2024, working in multiple practice areas of the firm, with a special focus on the corporate field. Prior to joining GALA, he began his practice as a lawyer in September 2023 in Madrid. José Manuel has participated in numerous matters, mainly involving clients from energy generating companies, corporations and investment funds. He has also distinguished himself in the fields of banking law and tax law.



Ramón Arias began his private practice at Galindo, Arias & López in 1989, specialising as a legal adviser to national and multinational companies, with emphasis on the financial, aeronautical, corporate and public services sectors. He has vast experience in the areas of corporate, tax, banking and financial law. Ramón has led work teams in important mergers and acquisitions, and has participated in advising on and structuring syndicated loans and stock securitisations. He was a member of Transparency International, Panama Chapter, and has done extensive pro bono work in historic preservation law.

Galindo, Arias & López

Scotia Plaza, Floor 11
Federico Boyd Avenue and 51st Street
0816-03356 Panamá
Republic of Panamá

Tel: +507 303-0303
Email: gala@gala.com.pa
Web: gala.com.pa



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

International tax law in Panama is shaped by three main sources:

- legislation;
- administrative regulations; and
- constitutional principles.

Together, these sources define the framework for cross-border taxation, treaty application and international tax compliance.

Legislation

The primary statutory framework is contained in Law 8 of 1956 (Fiscal Code), as amended, which establishes the foundations of the Panamanian tax system. Given that the cornerstone of the Panamanian tax system is the territoriality principle, the legislation regulates:

- the taxation of Panamanian-source income;
- withholding tax obligations on cross-border payments;
- transfer pricing rules;
- definitions of tax residence and permanent establishment; and
- procedures applicable to international transactions, among others.

Panama has also incorporated international standards through specific amendments to its tax legislation, particularly in response to OECD and BEPS developments.

Tax Administrative Regulation

The Panamanian Tax Authority issues administrative resolutions for guidance on interpreting and clarifying the application of domestic tax law in international matters. These regulations commonly address procedures for requesting treaty benefits, transfer pricing compliance and adjustments, and the issuance of tax residence certificates.

While administrative regulations do not override statutory law, they play a significant role in shaping compliance and enforcement standards.

Constitutional Principles

The Political Constitution of the Republic of Panama plays a fundamental role in the international tax framework, guaranteeing principles such as legality of taxation, equality and due process. Furthermore, the Constitution establishes the hierarchy of legal norms, under which international treaties approved and ratified by Panama rank above ordinary legislation. Consequently, tax treaties prevail over domestic tax legislation in case of conflict.

Panama has developed a strategically targeted treaty network, designed primarily to support its position as an international services and logistics hub. Panamanian tax treaties are generally based on the OECD Model Tax Convention, but adapted to reflect Panama's territorial taxation system. The Panamanian treaty network includes agreements with countries in Europe, Latin America, the Middle East and Asia.

1.2 Hierarchy of Sources

Panamanian domestic tax law and related statutes establish the basic rules for Panamanian taxation, setting forth Panama's principle of fiscal territoriality, which is the cornerstone of the Panamanian tax system. In that sense, all international obligations must be implemented in a manner consistent with domestic law, including treaties and OECD guidelines.

Once approved and ratified, tax treatiesbecome part of domestic law and prevail over ordinary legislation in case of conflict. They may limit or modify how domestic tax rules apply, but they do not create new taxing rights.

OECD guidelines and commentary are generally applied as a technical reference.

1.3 OECD Model/United Nations Influence on Treaty Practice

Panama generally follows the OECD Model Convention when negotiating its bilateral double taxation agreements. Most of its treaties adopt OECD provisions regarding permanent establishment, the allocation of taxing rights, exchange of information and mutual agreement procedures.

However, in the past, the country has also incorporated elements of the UN Model Convention in its treaties with countries seeking greater taxing rights at source, particularly in treaties with developing countries.

Given that Panama operates under a territorial tax system, its treaties are often adapted to align with domestic source territorial rules.

While Panamanian treaties are broadly consistent with the OECD Model, each treaty must be reviewed individually to identify such variations.

1.4 Multilateral Instrument

Panama is a signatory to the Multilateral Instrument, which was ratified by Panama's National Assembly on 15 October 2020.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Panama's tax system is founded on the principle of fiscal territoriality. Under this principle, Panamanian income tax generally applies only to income that is legally considered Panama-source income, meaning income generated within the territory of the Republic of Panama.

The system is objective, as it does not take an individual's nationality, domicile or residence into account. In practice, this means that both Panamanians and foreigners are equally subject to taxation on income derived from Panamanian sources, regardless of where they live or hold citizenship or residence.

2.2 Tax Residence of Individuals

An individual is considered a tax resident of Panama if they remain in the national territory for more than 183 days during a fiscal year or the immediately preceding year, whether consecutively or non-consecutively. An individual will also be deemed a Panamanian tax resident if they have established a permanent home in the Republic of Panama. In that regard, the Panamanian Tax Authority interprets the concept of a permanent home as the individual's centre of vital interests, which may include both economic and family ties. In practice, this means that residency is determined not only by physical presence but also by the strength of the person's personal, family and economic connections to Panama.

2.3 Taxation of Resident Individuals

Individuals (either Panamanian or foreign), domiciled in Panama are taxed solely on the income they produce within Panamanian territory. Panama's individual income tax is progressive, and will apply as follows:

- up to USD11,000: 0 % (no tax);
- USD11,001 to USD50,000: 15 % on the amount over USD11,000; and
- above USD50,000: USD5,850 plus 25 % on the excess over USD50,000.

These brackets apply to net taxable income after allowable deductions.

It is important to note that an individual may be considered a taxpayer in Panama without being a tax resident. Therefore, the term "tax resident" should not be taken into consideration for assessing tax liability under Panamanian law.

2.4 Taxation of Non-Resident Individuals

Individuals domiciled abroad and earning Panamanian-source income are generally subject to withholding tax on employment or professional income derived within Panama. In practice, the same progressive tax rates that apply to residents are also used to calculate the tax on Panama-source income for individuals domiciled abroad.

For withholding purposes, the payor is responsible for withholding and remitting the income tax to the Panamanian Tax Authority. The withholding is calculated on 50% of the total amounts paid to the individual, using the applicable progressive tax rates outlined in **2.3 Taxation of Resident Individuals**. Such withholding tax rates may be reduced by the application of a double tax treaty.

2.5 Tax Residence of Legal Entities

Legal entities will be considered tax residents of Panama if they are incorporated in Panama or properly registered as foreign entities in the Panamanian Public Registry, and if they maintain the material means of management and administration within Panamanian territory.

In practice, this generally entails the following.

- Board of directors' meetings in Panama: the company's board must hold meetings in Panama to show that strategic decisions are made locally, supporting the determination that the place of effective management is in Panama.
- Substantive commercial or support activities: the company must actively conduct commercial operations or provide services to affiliates or third parties. Mere existence on paper is not sufficient.
- Personnel in Panama: the company must maintain employees in Panama to carry out its business operations.
- Physical office space: the company must have a functional office in Panama from which its staff perform day-to-day activities.

2.6 Definition of Permanent Establishment

Panama's concept of permanent establishment is generally aligned with the OECD Model Convention. However, the definition contained in Panama's domestic regulations does have certain deviations.

In Panama, a foreign individual or legal entity is considered to carry on business in the Republic of Panama through a permanent establishment when, directly or through an agent, employee or representative, it maintains in Panamanian territory any fixed place of business or any centre of activity where its business is conducted, in whole or in part. Foreign individuals or legal entities are also considered to have a permanent establishment in Panama when they maintain a head office, branch, offices, factories, workshops, facilities, warehouses, stores or other establishments in Panama, and also in cases in which such individual or legal entity:

- carries out construction, installation or assembly projects (including related supervision) for more than 183 days within a 12-month period;
- provides services, including consulting, directly or through personnel, for the same or related project for more than 183 days in a 12-month period;
- uses equipment, facilities or platforms for natural resource exploration or exploitation for over 183 days in a 12-month period; or
- conducts activities in mining, hydrocarbons, agriculture, forestry, livestock or other natural resource extraction, or maintains workplaces for professional or artistic activities, directly or through personnel.

Regarding deviations to the OECD Model's permanent establishment concept, please note the following.

- Service permanent establishments are recognised when services, including consulting, are provided for more than 183 days in a 12-month period, even without a fixed office, whereas the OECD Model recognises service permanent establishments but

leaves thresholds and application to individual treaties.
- Construction, installation and assembly projects in Panama exceeding 183 days are considered a permanent establishment, while the OECD typically applies a 12-month threshold.
- Panama also explicitly treats the use of equipment, drilling platforms and installations for natural resource exploitation as a permanent establishment if used for more than 183 days, whereas the OECD focuses more on substance than on detailed activity lists.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Income derived from immovable property located in the Republic of Panama is subject to Panamanian income tax, regardless of the owner's nationality, residence or domicile. The determining factor is the location of the property, as Panama applies a territorial tax system.

Upon the transfer of Panamanian real estate, the seller is subject to the capital gains tax regime, whether the seller is an individual or a legal entity, Panamanian or foreign. The seller may choose between two alternatives:

- they may file a tax return with the Panamanian Tax Authority, calculating the actual taxable gain (transfer price minus deductible costs and expenses allowed by law), and pay income tax at a 10% rate on the net gain; or
- they may pay 3% of the higher of the transfer value or the assessed value of the property, as an advance payment of capital gains tax. The seller may elect to treat this 3% payment as the final and definitive tax on the transaction.

If the 3% advance exceeds the tax resulting from applying the 10% rate to the actual gain, the taxpayer may request a refund or apply the excess as a tax credit.

Importantly, for notarial purposes, the public deed of transfer must include proof of payment of the corresponding income tax or advance payment.

Furthermore, income derived from the lease of immovable property located in Panama constitutes Panamanian-source income and is therefore subject to Panamanian income tax in the hands of the recipient, at the applicable general rates for individuals or legal entities. Immovable property located in Panama will amount to a permanent establishment for its foreign owner, individual or corporate.

3.2 Business Profits

Business profits derived from activities carried out within Panamanian territory are subject to income tax at the general rates applicable to individuals and legal entities, in accordance with Panama's territorial tax system, under which only Panama-source income is taxable.

Generally, in the context of cross-border transactions, income is considered Panama-source income when it is received by individuals or legal entities domiciled outside the Republic of Panama as a result of any service or act, whether documented or not (produced within or outside the Republic of Panama), that benefits individuals or entities, domestic or foreign, located within Panama. This applies to the extent that the service affects the production or preservation of Panama-source income and the related expense has been treated as a deductible expense by the Panamanian payor.

For these purposes, the Panamanian payor must withhold income tax by applying the general income tax rate to 50% of the gross amount remitted abroad and remit such tax directly to the Panamanian Tax Authority. Considering that the general corporate income tax rate is currently 25%, the effective withholding rate amounts to 12.5% of the gross amount remitted. In the case of payments made to individuals, the applicable rate may vary depending on the amount remitted and the total income received by such individual during the relevant fiscal period, in accordance with the progressive rates established under Panamanian law.

3.3 Passive Income

Under Panamanian law, withholding taxes will apply, depending on the nature of the payment and the recipient.

Dividends are generally subject to dividend tax at a 10% rate when distributed out of Panamanian-source profits and 5% when distributed out of foreign-source profits.

On the other hand, interest and royalties paid to foreign recipients are generally subject to withholding at an effective rate of 12.5% (25% applied on a deemed 50% base, under the rules described above, applicable to corporations). In the case of payments made to individuals, the applicable rate may vary depending on the amount remitted and the total income received by such individual during the relevant fiscal period, in accordance with the progressive rates established under Panamanian law.

Applicable tax treaties may reduce the domestic rates, subject to treaty conditions and limitations.

3.4 Capital Gains

Income derived from the sale of shares is subject to Panama's capital gains tax regime at a 10% rate on the net gain.

In the case of transfers of securities (including shares) that generate Panama-source income (meaning that the securities are considered economically invested within Panamanian territory), the purchaser is required to withhold 5% of the gross purchase price as an advance payment of capital gains tax.

The seller may elect to treat this 5% withholding as the final tax due on the transaction, or alternatively file a tax return calculating the actual capital gain and apply the 10% rate to the net gain. If the 5% withheld exceeds the tax resulting from applying the 10% rate to the actual gain, the seller may request a refund or apply the excess as a tax credit, in accordance with Panamanian tax regulations.

For real estate capital gains tax, please see **3.1 Income From Immovable Property**.

3.5 Employment Income

Employment income is taxed under the general individual income tax regime and, consistent with Panama's territorial system, only Panamanian-source employment income is subject to tax (that is, compensation attributable to services performed in Panama), regardless of the individual's nationality, residence or domicile. The applicable progressive rates are:

- 0% up to USD11,000;
- 15% on the excess from USD11,000 to USD50,000; and
- 25% on amounts above USD50,000.

The employer is generally required to withhold and remit the corresponding income tax, including where the recipient is not tax resident in Panama.

With respect to short-term assignments or cross-border employment, Panama does not have a special domestic short-term exemption rule. Taxation depends primarily on whether the services are physically performed in Panama. However, relief may be available under an applicable double tax treaty, subject to meeting the treaty conditions. For corporations, remote work arrangements may raise permanent establishment considerations, depending on the level of activity and degree of permanence in Panama.

3.6 Other Income

Other than the territorial sourcing principle and the associated withholding mechanisms, there are no specific categories of income subject to a materially different treatment that would require separate treatment for purposes of this chapter.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Panama has not implemented Amount B in its domestic legislation.

4.2 Pillar One – Amount A

Panama has not yet taken formal or publicly announced steps to implement Pillar One Amount A within its domestic tax framework. Hence, the country has not formally confirmed its position on such.

4.3 Pillar Two
Panama has not yet implemented the global minimum tax.

4.4 Specific Features or Deviations of Pillar Two
Panama has not yet implemented the global minimum tax.

4.5 Digital Services Tax
Panama has not yet implemented a specific tax on digital products or digital services.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes
Under the Panamanian Tax Procedure Code (Law 76 of 2019), tax evasion and tax fraud involve intentional and fraudulent conduct aimed at avoiding or reducing the payment of taxes in violation of the law. Indicators of such conduct may include:

- material irregularities in accounting records;
- false bookkeeping entries;
- the issuance or use of false invoices;
- the destruction of mandatory records;
- simulated transactions; and
- the intentional failure to remit taxes that have been withheld.

By contrast, tax avoidance (*elusión*) refers to the execution of acts or transactions that depart from the purpose intended by the law, without a valid economic or legal justification other than reducing the tax burden or obtaining undue tax benefits or credits. Unlike evasion, avoidance does not necessarily involve the element of criminal intent (*dolus*), but rather an improper use of legal forms or structures.

Furthermore, the Panamanian Tax Authority may recharacterise simulated or artificial transactions and apply a general anti-avoidance approach, disregarding legal forms that are manifestly improper and designed solely to obtain a tax advantage.

5.2 Anti-Avoidance Mechanisms
Panama's primary procedural anti-avoidance mechanisms include:

- the power to recharacterise simulated or sham transactions, taxing the acts effectively carried out rather than their formal appearance; and
- a general anti-avoidance rule (GAAR) that allows the Panamanian Tax Authority, within the framework of a tax audit, to disregard legal forms that are manifestly improper and prearranged solely to avoid taxation or obtain an undue tax benefit. In such cases, the burden rests on the Tax Authority to substantiate the existence of fraud or improper conduct under tax law.

These tools are complemented by the Tax Authority's broad audit and verification powers, including on-site inspections, review of accounting books and supporting documentation, and examination of electronically stored information. The system is further reinforced by a sanctions regime addressing both formal non-compliance and substantive violations, including administrative tax evasion and criminal tax fraud.

In addition, the Panamanian Tax Procedure Code establishes a formal whistle-blower mechanism for reporting tax evasion or criminal tax fraud, including a statutory reward calculated as a percentage of the amounts effectively collected as a result of the report.

5.3 Blacklists and Non-Cooperative Jurisdictions
Panama does not hold a list of non-cooperative or high-risk jurisdictions for tax purposes, but it does have a mechanism and a formal list of countries to which it may apply retaliatory measures, which is distinct from tax blacklists used by other jurisdictions. The legal basis for this is Law 48 of 26 October 2016 (which replaced an earlier retorsion law), under which Panama can publish a list of states that "discriminate against the Republic of Panama", and then consider reciprocal or retaliatory actions.

5.4 Reporting Obligations and Disclosure Regimes

The Panamanian Tax Procedure Code establishes broad compliance, reporting and disclosure obligations aimed at preventing tax evasion and avoidance.

Such regulation sets forth statutory obligations for taxpayers and other obligated persons, including:

- registering and keeping information up to date in the tax registries;
- filing sworn returns, self-assessments and related submissions;
- maintaining accounting books and tax records;
- supporting transfers of goods and the provision of services with legally issued vouchers, invoices or receipts; and
- providing information generally required under tax rules or specifically requested by the tax authority, together with a general duty to co-operate with the tax authority.

Furthermore, such regulation imposes an express obligation on third parties to provide relevant tax information derived from their economic, professional or financial relationships with taxpayers, subject to professional secrecy and other legal privileges. The Code also authorises the tax authority to conduct on-site verifications in establishments open to the public, requiring express authorisation, and establishes that audit reports (minutes) retain validity and probative value even if the taxpayer or its representatives refuse to sign or receive a copy.

5.5 Role of Tax Authorities and Enforcement Measures

Pursuant to provisions set forth in the Panamanian Tax Procedure Code, the Panamanian Tax Authority has extensive powers to audit and verify compliance.

Such regulation authorises the tax authority to require taxpayers to present, at their domicile or business premises, accounting books, records and supporting documents related to taxable transactions, including electronic records. It also allows audits at the premises of taxpayers and relevant third parties, asset inventories and reviews of accounting systems. These powers may be exercised jointly or successively, and the tax authority may request assistance from other competent authorities. In cases of repeated obstruction or impediment, the authority may conduct searches and seize goods and documents, as legally permitted.

It is worth noting that, under such regulation, on-site inspections in establishments that are open to the public require express authorisation for officers, and all findings must be recorded in formal minutes. The validity and probative value of these audit reports are not affected if the taxpayer or representatives refuse to sign or receive a copy.

6. Penalties and Sanctions

6.1 Tax Penalties

In the Republic of Panama, the Panamanian Tax Authority is responsible for imposing fines and sanctions, issuing tax assessments, and enforcing compliance. It also oversees the application of double tax treaties, transfer pricing matters, the issuance of tax residence certificates, and the determination of permanent establishments.

The legal framework governing penalties related to cross-border transactions is primarily:

- the Panamanian Tax Code (Law 8 of 1956, as amended), which establishes substantive tax obligations, including penalties for non-compliance; and
- the Panamanian Tax Procedure Code (Law 76 of 2019), which sets out procedural rules for tax assessments, collection, appeals and enforcement.

Together, these laws authorise the Panamanian Tax Authority to assess and enforce penalties in the context of cross-border operations, ensuring compliance with both domestic tax rules and Panama's international obligations.

6.2 Criminal Penalties

Tax evasion in Panama is understood as any act or conduct carried out by a taxpayer with intentional fraud (dolus) to avoid paying or to reduce taxes in violation of the law. According to Panamanian law, tax evasion can take two forms.

- Administrative tax evasion applies when the amount evaded is less than USD300,000 per year, excluding fines, surcharges and interest. In such cases, the matter is handled administratively by the Panamanian Tax Authority. If the non-payment occurs without concealment or the intentional use of fraudulent means, the sanction will consist of a fine ranging from 25% to 50% of the taxes owed.
- Criminal tax evasion (fraudulent tax evasion) applies when the amount evaded is equal to or exceeds USD300,000. Such cases fall under the jurisdiction of the Public Prosecutor's Office and constitute the criminal offence of fraudulent tax evasion.

It is important to note that in cases of criminal tax evasion, both individuals involved and the legal entity itself may face sanctions, including prison sentences. These criminal proceedings also carry extrajudicial consequences, which have been applied to fiscal periods starting in 2019, adding further implications for taxpayers found guilty of this offence.

6.3 Interaction Between Tax and Criminal Procedures

The Panamanian Tax Authority is responsible for identifying potential tax evasion or fraud. If the amount involved meets the threshold for criminal tax evasion (see **6.2 Criminal Penalties**), the Tax Authority must automatically refer the case to the Public Prosecutor's Office. Once referred, the Public Prosecutor reviews the evidence and may open a criminal investigation for fraudulent tax evasion.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

The following legal instruments that form the basis of administrative co-operation in tax matters in the Republic of Panama:

- double tax conventions with mutual agreement procedures and information exchange provisions;
- tax information exchange agreements duly executed by the Republic of Panama;
- the OECD Multilateral Instrument and other OECD standards; and
- domestic legislation that implements these international commitments.

7.2 Exchange of Information Clauses in Tax Agreements

The Republic of Panama exchanges information as follows:

- automatically – the country has implemented the Common Reporting Standard of the OECD;
- upon request, as per double tax treaties and tax information exchange agreements; and
- spontaneously, if it identifies matters or interest in another jurisdiction, based on the legal framework provided by its tax treaties and domestic legislation.

7.3 Other Forms of International Tax Collaboration

Panama participates in multilateral arrangements mainly through the mutual agreement procedure and information exchange under existing treaties for the avoidance of double taxation, and the tax information exchange agreements.

Panama does not currently participate in the International Compliance Assurance Programme, nor in any initiative that co-ordinates joint or simultaneous tax audits.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Panama's double tax treaties include provisions for Mutual Agreement Procedures (MAPs), allowing taxpayers to resolve issues of double taxation or treaty interpretation with the competent authorities of the treaty partners. However, Panama has not established a formal, standalone MAP programme. MAPs are handled on a case-by-case basis through the competent authority mechanism provided in each treaty.

8.2 Application Deadlines

Most of Panama's double tax treaties containing a MAP clause establish a three-year period from the date of the action giving rise to the dispute to file a MAP request with the Panamanian Tax Authority.

8.3 Mandatory Binding Arbitration

While Panama has a functioning MAP process under its double tax treaties, mandatory binding arbitration is not generally available in Panama's tax treaty network.

9. Dispute Prevention

9.1 Advance Pricing Agreements

At the time of writing, Panama has not enacted an advance pricing agreement programme.

9.2 Other Mechanisms

Since 2024, responses to tax inquiries made by individuals or companies to the Panamanian Tax Authority will be binding only for the tax administration, and only to the extent that they are favourable to the taxpayer making the request. This binding effect is limited to the specific case under consultation and does not extend to future transactions or events that occur after the inquiry.

Trends and Developments

Contributed by:
Anna Cristina Valdés, Edgar Herrera, José Manuel Motta and Ramón Arias
Galindo, Arias & López

Galindo, Arias & López (GALA) is a Panamanian full-service law firm with an over 55-year tradition of excellence and a commitment to providing legal services of the highest quality and ethical standards. The firm has built long-term relationships with a high-profile, local and international client base, with business interests in Panama and abroad. GALA stands out for its expertise in complex regulatory issues, local and cross-border transactions, complex asset and project financing transactions from highly regulated industries, and a stellar dispute resolution track record, servicing clients throughout Panama's key business sectors: aviation, energy, telecommunications, banking, finance, infrastructure, real estate, transportation and logistics, tourism and commerce.

Authors



Anna Cristina Valdés was promoted to partner at Galindo, Arias & López in January 2026. She has extensive experience in national and international tax law, advising both national and multinational companies on complex tax matters. Her practice includes the application of Panama's double taxation treaties, transfer pricing and general international taxation, as well as representing taxpayers before the Panamanian tax authority.



Edgar Herrera has been part of Galindo, Arias & López since 2004, specialising in domestic and international tax law. He combines deep expertise in immigration and tax law to advise prominent individuals, families and family-owned businesses on complex wealth management, asset restructuring and succession planning matters, allowing clients to preserve, manage and transfer wealth seamlessly across generations and jurisdictions. He is a recognised expert in the practical application of treaties to avoid double taxation, as well as a consultant and litigator in cases of international taxation and transfer pricing.



José Manuel Motta has been part of the Galindo, Arias & López team since September 2024, working in multiple practice areas of the firm, with a special focus on the corporate field. Prior to joining GALA, he began his practice as a lawyer in September 2023 in Madrid. José Manuel has participated in numerous matters, mainly involving clients from energy generating companies, corporations and investment funds. He has also distinguished himself in the fields of banking law and tax law.



Ramón Arias began his private practice at Galindo, Arias & López in 1989, specialising as a legal adviser to national and multinational companies, with emphasis on the financial, aeronautical, corporate and public services sectors. He has vast experience in the areas of corporate, tax, banking and financial law. Ramón has led work teams in important mergers and acquisitions, and has participated in advising on and structuring syndicated loans and stock securitisations. He was a member of Transparency International, Panama Chapter, and has done extensive pro bono work in historic preservation law.

Contributed by: Anna Cristina Valdés, Edgar Herrera, José Manuel Motta and Ramón Arias, **Galindo, Arias & López**

Galindo, Arias & López

Scotia Plaza, Floor 11
Federico Boyd Avenue and 51st Street
0816-03356 Panamá
Republic of Panamá

Tel: +507 303-0303
Email: gala@gala.com.pa
Web: gala.com.pa



Myths and Facts About Panamanian Tax Residence Certificates

Panamanian tax residence explained: what the law really says and how to secure your certificate

For decades, Panama has strategically positioned itself as an international services hub, drawing entrepreneurs, multinational corporations, global investors and nomads seeking stability, connectivity and a business-friendly environment at the crossroads of the Americas. In light of this, one of the most discussed – and often misunderstood – topics in this context is tax residence and, more specifically, the Panamanian Tax Residence Certificate.

To properly understand how to obtain a Tax Residence Certificate in Panama, it is essential to begin with the foundations of the Panamanian tax system and to clearly distinguish between tax liability and tax residence – two concepts that are related in many jurisdictions, but not necessarily here.

Panama's territorial tax system

The Panamanian tax system is based, generally, on the principle of fiscal territoriality. According to this principle, the sole focus of Panamanian income tax is to tax income that, according to the law, is considered as Panamanian-source income – ie, the income produced within the territory of the Republic of Panama, regardless of the place where the income is received.

It is an objective system under which considerations of the nationality, domicile and residence of individuals are irrelevant. Hence, the Panamanian tax system will be applicable to "taxpayers" indistinctly – ie, Panamanians and foreigners – if they derive income considered as Panamanian source-income.

Generally speaking, and except for specific regimes, the following applies under current legislation:

- both individuals and legal entities are generally subject to income tax only if they generate Panamanian-source income; and
- foreign-source income is not taxable in Panama, even if received by a Panamanian resident.

This distinction is fundamental. In many jurisdictions that apply a worldwide taxation system, tax residents are subject to income tax on their global earnings, regardless of where that income is generated. Simply being classified as a resident is enough to trigger taxation on worldwide income.

The Republic of Panama, however, takes a markedly different approach. Its tax system is rooted in territoriality, meaning that taxation is tied to the source of the income, not merely to the status of residence. In practical terms, unless a person (individual or corporation) generates income that qualifies as Panamanian-source under domestic law, that person will not be subject to Panamanian income tax, nor to the related formal filing obligations, even if considered a tax resident.

Tax liability, tax residence and immigration residence: three different concepts

A frequent misunderstanding is the belief that paying income tax automatically confers tax residence, or that holding permanent immigration status (immi-

gration residence) in Panama is enough to qualify as a tax resident. In Panama, each concept is governed by distinct legal criteria, and confusing them may lead to serious compliance and tax planning errors. In that sense, it is worth noting that it is entirely possible to:

- be a Panamanian tax resident and not be required to pay income tax (because no Panamanian-source income is generated); or
- generate Panamanian-source income and pay taxes without necessarily meeting all criteria for tax residence, as will be reviewed later on.

Tax residency in Panama is a legal status with specific purposes, especially in the international context and as it pertains to double taxation treaties.

However, a Panamanian Tax Residence Certificate is not only for treaties; the Panamanian Tax Authority can currently issue residence certificates even if a person or corporation is not claiming treaty benefits. Many people and companies use it to show foreign tax authorities, banks or other institutions that they are officially recognised as Panamanian tax residents.

With global transparency and stricter compliance rules, this certificate has become an important document for banking, investments and international tax matters.

The legal definition of tax residence in Panama

Panama did not formally define the concept of tax residence until mid-2012. The definition became necessary as part of the country's broader strategy to expand international services and enter into agreements for the avoidance of double taxation with several countries.

Double tax treaties require clear definitions of tax residence in order to allocate taxing rights between jurisdictions. As Panama entered into multiple treaties, it became essential to establish a domestic rule clarifying who effectively qualifies as a Panamanian tax resident.

Why is tax residence so important?

Understanding the distinction between tax residence and tax liability is crucial because the Tax Residence Certificate plays a key role internationally. It serves primarily to:

- confirm eligibility to apply the benefits of a double taxation avoidance agreement;
- demonstrate that the individual or company has sufficient nexus with Panama to be considered a tax resident; and
- potentially limit another country's ability to tax certain income, depending on treaty provisions and internal regulations.

In recent years, the Tax Residence Certificate has become one of the most sought-after documents in cross-border structuring.

For individuals and corporations coming from worldwide taxation systems, proving tax residence in Panama can be particularly relevant. In such jurisdictions, authorities may attempt to tax global income unless the taxpayer can demonstrate that tax residence has been legitimately transferred elsewhere.

The reality: obtaining a Panamanian Tax Residence Certificate is not automatic

From an outside perspective, many assume that the process for procuring a Tax Residence Certificate is straightforward. This may be true for other jurisdictions, but it is not particularly the case for the Republic of Panama. In that sense, individuals and corporations often encounter situations in which they thought that would automatically be eligible for a Panamanian Tax Residence Certificate, such as:

- "if I pay income tax, I am automatically a tax resident"; or
- "if I have permanent immigration status in Panama, I am automatically a tax resident".

In practice, this could not be further from reality.

In Panama, Tax Residence Certificates are granted only after a detailed and often thorough administrative process, in which the applicant must demonstrate genuine and sufficient ties to the country. The applicant must submit a formal request to the Panamanian Tax Authority, accompanied by sufficient documentation (evidence) that confirms its status as a Panama-

nian tax resident. The authority responsible for issuing these certificates is the *Dirección General de Ingresos* (DGI), which operates under the Ministry of Economy and Finance of the Republic of Panama.

The process for issuing a Tax Residence Certificate may take months, and requires substantial documentary support, as previously mentioned. In that sense, advice regarding the issuance of a Panamanian Tax Residence Certificate is often met with a reality check. Clients must carefully organise and structure their affairs to ensure that, by the time the certificate is issued, it fully meets the requirements and expectations of foreign authorities, financial institutions or international partners.

It is not just a formality. The timing, documentation and demonstration of genuine ties to Panama are critical for the certificate to serve its intended international purpose.

Furthermore, it is important to note that Tax Residence Certificates are valid only for the fiscal year for which they are issued. If an individual or entity requires a certificate for a different fiscal period, proof of tax residence must be submitted again, accompanied by a formal request, specifically for that period.

Tax residence for legal entities

For corporations, whether incorporated in Panama or properly registered as foreign entities before the Panamanian Public Registry, obtaining a Tax Residence Certificate requires demonstrating that the entity's effective management and administration are conducted within Panamanian territory.

This has the following meaning, in practical terms.

- Board of directors meetings in Panama: the company's board of directors must hold meetings in Panama to evidence that strategic decisions are made locally. This supports the argument that the entity's place of effective management is in Panama.
- Real commercial or support activities: the company must conduct commercial operations or provide services to affiliated or third parties. Merely existing on paper is insufficient.
- Personnel: the company must maintain hired personnel in Panama to support its operations.
- Physical office space: the company must have a physical office in Panama from which its employees conduct their day-to-day activities.

Only when these elements are satisfied will the tax authority consider issuing a Tax Residence Certificate.

It is important to clarify that conducting activities in Panama does not automatically imply paying income tax in Panama. Under Panamanian law, certain structures – such as offshore corporations or Panamanian holding companies – may have a physical presence in Panama without generating taxable Panamanian-source income, depending on how their activities are structured.

Tax residence for individuals

For individuals, the analysis differs and often becomes more complex. To obtain a Tax Residence Certificate, an individual must demonstrate the following.

- Physical presence: spending 183 days or more in Panama, consecutive or non-consecutive, within a given fiscal year (January to December) will automatically qualify an individual as a tax resident. Moreover, if the individual exceeds the 183-day threshold in a particular fiscal year, they will also be considered a tax resident for the following fiscal year.
- Permanent home: maintaining a permanent home in Panama, either owned or leased.
- Economic and/or family ties: establishing substantial economic or family connections within the country.

It is worth mentioning that even individuals who do not strictly meet the 183-day requirement may qualify for a Tax Residence Certificate if they can demonstrate sufficient personal, economic and residential ties to the Republic of Panama.

Increased scrutiny in recent years

Due to global transparency standards and information exchange agreements, the Panamanian Tax Authority has increased scrutiny over its tax residence applications.

For individuals, it has become increasingly important to show that they have not spent more than 183 days in any other jurisdiction, particularly in their country of nationality. This helps establish that Panama is their primary tax residence and avoids conflicts with foreign tax authorities who may otherwise claim taxing rights based on physical presence or citizenship.

Globally, individuals often maintain homes, investments and family ties across multiple countries. As a result, proving exclusive or primary tax residence in Panama may require detailed evidence, including:

- immigration records;
- utility bills and lease agreements;
- employment or business documentation, or investments;
- evidence of local economic activity; or
- proof of family relocation, or any family ties in the Republic of Panama.

The burden of proof will always lie with the applicant.

Final thoughts

The Panamanian Tax Residence Certificate is not merely a document – it is a legal status backed by substance requirements and administrative review. As international tax compliance standards tighten and cross-border information exchange becomes the norm, superficial structures are no longer sufficient.

Whether for individuals seeking relocation or corporations designing international structures, careful planning and proper documentation are essential. Understanding what Panamanian law truly establishes and what is required in practice is the first and most important step toward successfully obtaining tax resident status in Panama.

General conclusions

- Panama operates under a territorial tax system. Generally, only Panamanian-source income is taxed.
- Tax residence, tax liability and immigration residence are separate legal concepts.
- Tax residence was formally defined in 2012, due to Panama's expansion of double taxation treaties.
- A Tax Residence Certificate is primarily an international instrument used to access treaty benefits and establish fiscal nexus.
- Obtaining the certificate is neither automatic nor immediate.
- Both individuals and corporations must demonstrate genuine, substantive ties to Panama.

PORTUGAL



Law and Practice

Contributed by:
Tânia de Almeida Ferreira, João Pedro Albuquerque, Filipe Gomes da Silva and Pedro Neves
CCA Law Firm

Contents

1. Sources and Principles p.351
1.1 Domestic Sources of International Tax Law p.351
1.2 Hierarchy of Sources p.351
1.3 OECD Model/United Nations Influence on Treaty Practice p.352
1.4 Multilateral Instrument p.352

2. Territoriality, Residence and Permanent Establishment p.352
2.1 General Principle of Territorial Taxation p.352
2.2 Tax Residence of Individuals p.352
2.3 Taxation of Resident Individuals p.352
2.4 Taxation of Non-Resident Individuals p.353
2.5 Tax Residence of Legal Entities p.353
2.6 Definition of Permanent Establishment p.353

3. Taxation of Cross-Border Income p.354
3.1 Income From Immovable Property p.354
3.2 Business Profits p.354
3.3 Passive Income p.355
3.4 Capital Gains p.356
3.5 Employment Income p.358
3.6 Other Income p.358

4. OECD/G20 Global Tax Reform p.358
4.1 Pillar One – Amount B p.358
4.2 Pillar One – Amount A p.359
4.3 Pillar Two p.359
4.4 Specific Features or Deviations of Pillar Two p.359
4.5 Digital Services Tax p.359

5. Anti-Avoidance and Anti-Evasion Measures p.359
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.359
5.2 Anti-Avoidance Mechanisms p.360
5.3 Blacklists and Non-Cooperative Jurisdictions p.360
5.4 Reporting Obligations and Disclosure Regimes p.361
5.5 Role of Tax Authorities and Enforcement Measures p.361

6. Penalties and Sanctions p.361
6.1 Tax Penalties p.361
6.2 Criminal Penalties p.362
6.3 Interaction Between Tax and Criminal Procedures p.362

7. Administrative Co-Operation p.362
7.1 Legal Framework for Administrative Co-Operation p.362
7.2 Exchange of Information Clauses in Tax Agreements p.363
7.3 Other Forms of International Tax Collaboration p.363

8. Mutual Agreement Procedures and Arbitration p.364
8.1 Availability and Legal Basis p.364
8.2 Application Deadlines p.364
8.3 Mandatory Binding Arbitration p.364

9. Dispute Prevention p.364
9.1 Advance Pricing Agreements p.364
9.2 Other Mechanisms p.364

CCA Law Firm embraces adaptability and responsiveness in a rapidly developing world across diverse scenarios and sectors. The firm is future-focused, helping organisations achieve bold, effective and forward-thinking solutions. Innovation is central to CCA's culture, driving it to break barriers, challenge stereotypes and foster a dynamic work environment that attracts top talent. Committed to creating value, CCA continuously seeks new ways to deliver knowledge and strategic support to its clients and partners. The firm's diverse client base includes multinational technology companies, SMEs, venture capital-backed startups, family businesses and private clients, regardless of size or industry. CCA has offices in Lisbon and Oporto. Its business-oriented professionals share a common ambition: to transform the way legal services are delivered.

Authors



Tânia de Almeida Ferreira has almost 25 years' experience in tax law and is recognised for her technical precision, strategic insight and expertise in complex tax matters. She advises national and international investors at CCA Law Firm throughout the full investment lifecycle from structuring to divestment, ensuring robust and tax-efficient solutions through regulated and non-regulated structures. Her practice focuses on financial and real estate taxation, M&A, corporate restructurings and business reorganisations. Experienced in complex negotiations across sectors, Tânia combines strong technical knowledge with a deep understanding of clients' businesses, anticipating risks and delivering integrated, strategic solutions that ensure legal certainty and effective risk mitigation.



João Pedro Albuquerque focuses his practice on tax law at CCA Law Firm, particularly corporate taxation, advising national and international clients on cross-border operations and corporate reorganisations. He has extensive experience in the taxation of legal entities, particularly income taxes, providing integrated analyses tailored to each transaction's structure. His work also covers financial taxation, supporting regulated and non-regulated investment structures, and designing incentive plans and ESOPs to deliver tax-efficient solutions aligned with clients' strategic objectives. João also represents clients in administrative, arbitral and judicial tax proceedings, combining strong technical expertise with a rigorous, practical approach to resolving complex tax disputes effectively.



Filipe Gomes da Silva specialises in indirect taxation at CCA Law Firm, with a strong focus on VAT and excise duties. He advises national and international clients on cross-border transactions and daily tax management, adopting a technical, solution-oriented approach. His expertise includes real estate taxation, particularly in investment projects and asset restructurings, working with both regulated and non-regulated structures. Filipe also supports clients during tax audits and represents them in tax proceedings, safeguarding their interests throughout. His work also connects taxation with technology, addressing digital reporting, automated compliance and tax function transformation, combining regulatory precision with practical sector knowledge to enhance efficiency and manage risks under national and EU law.



Pedro Neves advises national and international clients on tax matters, including administrative, judicial and arbitral proceedings. His practice centres on structuring and restructuring operations, as well as ongoing corporate tax support, with particular focus on corporate taxation, VAT, property taxes and stamp duty. He has strong expertise in indirect taxation and regularly advises on complex issues related to the special tax on online gambling, assisting domestic and international operators with regulatory interpretation and compliance. Combining technical knowledge with a pragmatic approach, Pedro aligns tax advice with business realities and sector-specific dynamics to deliver effective and commercially sound solutions.

Contributed by: Tânia de Almeida Ferreira, João Pedro Albuquerque, Filipe Gomes da Silva and Pedro Neves, **CCA Law Firm**

CCA Law Firm

Edifício Diogo Cão,
Doca de Alcântara Norte
1350-352 Lisboa
Portugal

Praça do Bom Sucesso, Nº 131
Edifício Península, 2.º andar, sala 204
4150-146 Porto
Portugal

Tel: +351 213 223 590
Fax: +351 213 223 599
Email: ccageral@cca.law
Web: www.cca.law

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main sources of international tax law in Portugal include international treaties (notably double tax treaties, or DTTs), European Union (EU) law and domestic law designed to align with global standards. These sources apply concurrently in both domestic and cross-border contexts and are primarily aimed at eliminating double taxation, preventing tax evasion and regulating cross-border transactions.

Portuguese case law, in particular that of the administrative and tax courts, has some pertinence, with the courts frequently addressing issues of treaty interpretation and the interaction between domestic provisions, EU law and anti-abuse standards. The approach of the courts tends to be consistent with developments in international and EU case law, which acts as the main authority responsible for interpretation in line with global standards and practices.

Administrative guidance and binding rulings issued by the Portuguese Tax Authority (PTA) play a pivotal role in promoting consistency in tax administration. Binding rulings are commonly sought in domestic and cross-border reorganisations, financing structures and investment transactions to secure legal certainty, as they set out the PTA's interpretation by reference to a defined factual framework. Notwithstanding the above, the PTA has shown a degree of reluctance in adopting interpretations derived from international standards and case law.

Portugal maintains an extensive DTT network (approximately 79 treaties concluded, of which 78 are currently in force) which follows the OECD model. These treaties allocate taxing rights between contracting states in respect of the main categories of income, including income from immovable property, business profits, dividends, interest, royalties, capital gains, employment income and pensions. Issues relating to treaty access, entitlement to benefits and treaty interpretation frequently arise in inbound and outbound structuring, as well as in tax disputes, rendering DTTs one of the main sources of international tax law in Portugal.

1.2 Hierarchy of Sources

International treaties duly ratified and published form part of the Portuguese legal system and, as a rule, prevail over conflicting domestic provisions. This principle applies to tax treaties (including DTTs) and other international tax instruments.

DTTs do not create standalone taxing powers; rather, they allocate taxing rights between contracting states, thereby restricting the exercise of domestic taxing jurisdiction. This is particularly relevant in areas such as withholding taxes, permanent establishment (PE) assessment, and the allocation of taxing rights in respect of cross-border income.

As an EU member state, Portugal is also bound by EU law, including the fundamental freedoms and applicable Regulations and Directives. Domestic tax law must comply with EU law, with the case law of the Court of Justice of the European Union (CJEU) having a material impact on the interpretation and application of Portuguese tax provisions in cross-border situations.

Domestic law remains the primary operational basis for taxation. However, in cross-border matters, its interpretation and application are subject to, and constrained by, the applicable treaty provisions and EU law principles and provisions.

1.3 OECD Model/United Nations Influence on Treaty Practice

Portugal was one of the 20 founding member countries that signed the OECD Model in 1960 and its DTTs largely follow the OECD Model both in structure and allocation of taxing rights.

While core concepts such as residence, PE and business profits generally reflect OECD standards, some DTTs include provisions of the UN Model, reflecting the bilateral and negotiated nature of such instruments.

Portugal has departed from certain provisions of the OECD Model, notably in relation to Article 5 (PE), and in several bilateral DTTs has adopted elements more closely aligned with the UN Model Convention.

Moreover, in a number of DTTs Portugal has reserved the right to consider that a PE exists where a business activity of a non-resident company is carried on in Portugal with a certain degree of continuity through employees or other personnel engaged under contract.

As a result, Portuguese DTTs are not standardised. A case-by-case analysis is required rather than assuming a wholly standardised OECD-based approach.

1.4 Multilateral Instrument

Portugal signed the Multilateral Instrument (MLI) in 2017, ratified it in 2020, and it has been in force since June 2020.

As at the most recent date available (early 2026), the amendments introduced by the MLI are effective, in the case of Portugal, in approximately 60 bilateral DTTs, corresponding to around 60 countries or jurisdictions.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Portugal applies a residence-based system of taxation, whereby resident individuals and entities are subject to taxation on their worldwide income, whilst non-residents are taxed solely on income sourced in Portugal.

The Autonomous Regions of Madeira and the Azores adhere to the same principle, although reduced rates apply in respect of certain taxes.

2.2 Tax Residence of Individuals

An individual is deemed a tax resident in Portugal upon staying more than 183 days in Portugal in any relevant 12-month period or maintaining a house under conditions indicating the intention to hold and occupy it is as habitual residence.

Residence disputes most commonly arise in the context of international mobility and cross-border employment arrangements. Where dual residence occurs, DTTs tiebreaker rules determine the final allocation of residence for tax purposes.

2.3 Taxation of Resident Individuals

Resident individuals are taxed on their worldwide income. Employment and business income is generally subject to progressive Personal Income Tax (PIT) rates, currently reaching a top marginal rate of 48%, with an additional solidarity surcharge of up to 5% applying to higher income brackets.

Certain categories of income, such as dividends, interest, royalties, other capital income and capital gains, are generally subject to flat rates (typically 28%), unless the taxpayer opts for aggregation and progressive taxation.

Special deductions and reliefs are available, operating both at income determination level (income category assessment) and as taxable income direct deductions, being relief from double taxation available through DTT mechanisms or domestic foreign tax credit provisions.

Special tax regimes applicable to Non-Habitual Residents (NHR) are available, resulting in 20% flat rates for domestic income, and a full exemption for foreign-sourced income.

Accordingly, the effective taxation therefore depends on the residence status, the type of income, the applicable exemptions and reliefs and on the interaction with cross-border relief provisions.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals' liability to tax is limited to income source in Portugal.

Employment and business income relating to work performed in Portugal is generally taxed at a flat rate of 25%.

Dividends sourced in Portugal, interest, royalties and other capital income are typically subject to withholding tax at a domestic rate of 28%, subject to any reduction available under an applicable DTT or pursuant to EU law.

Capital gains derived by non-residents from Portugal-sourced assets, including immovable property or certain shareholdings, are also subject to tax. As a general rule, only 50% of immovable property gains are taxed (at the applicable progressive PIT rates, currently reaching a top marginal rate of 48%), while gains on shares may be exempt unless the assets derive more than 50% of their value from Portuguese immovable property.

Domestic provisions applicable to non-residents are frequently overridden by the applicable DTT, which may reduce domestic withholding tax rates and, in some cases, provide full relief. Access to DTTs' benefits depends on proper and timely submission of the requisite documentation.

2.5 Tax Residence of Legal Entities

A company is deemed to be tax resident in Portugal when its legal seat or place of effective management is located there.

Residence disputes may arise within international group structures, particularly where management functions are exercised across multiple jurisdictions or where there is a divergence between the legal seat and the place of effective management. DTTs' tie-breaker rules may become relevant in dual-residence scenarios, allowing for residence allocation for tax purposes.

2.6 Definition of Permanent Establishment

Domestic law defines a permanent establishment or PE as a fixed place of business through which a commercial, industrial or agricultural activity is wholly or partly carried out. The definition includes the usual examples such as a place of management, branch, office, factory, workshop or place of extraction of natural resources.

In addition to the standard "fixed place" concept, Portuguese domestic law expressly includes:

- construction, installation or assembly sites existing for more than six months (including related supervisory activities);
- platforms, vessels or installations used in the exploration of natural resources where activities exceed 90 days; and
- the provision of services (including consultancy services) performed in Portugal for more than 183 days within any relevant 12-month period.

The service PE provision and the six-month threshold applicable to construction projects depart from the traditional wording of the OECD Model, which generally adopts a 12-month threshold and does not contain a standalone service PE provision. As a result, domestic law may create PE exposure in situations where no PE would arise under the OECD standard.

Agency PE provisions have also been aligned with post-base erosion and profit shifting (BEPS) developments. A PE may arise where a person habitually plays the principal role leading to the conclusion of con-

tracts that are routinely finalised without material modification by the enterprise. Independent agents acting in the ordinary course of business remain excluded.

Activities of a preparatory or auxiliary character are excluded from PE status. However, anti-fragmentation principles apply where closely related enterprises carry on complementary activities in Portugal.

If a conflict occurs, the definition contained in the applicable DTT prevails to the extent that it is more restrictive than the domestic definition.

Following the update to the Commentary on Article 5 of the OECD Model, clear guidance was provided as to when cross-border remote working arrangements may give rise to a PE. The update introduces additional guidance, including a two-step analytical system involving a temporal threshold and an assessment of whether the employee's presence in the other jurisdiction is driven by a relevant business purpose.

Under this approach, a PE is more likely to arise where a home office is used for substantive business purposes of the enterprise. By contrast, remote working arrangements implemented primarily for employee retention or cost-efficiency reasons are not, in themselves, regarded as sufficient to satisfy the business-purpose criterion. This clarification is broadly consistent with the approach traditionally adopted in Portugal, which focuses on the availability of the location to the enterprise and the carrying on of business activities through it.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Individuals

Income from Portuguese immovable property (rental income) is taxed at a flat rate of 28%, or 25% in case of residential leases (reduced rates may apply to long-term residential lease agreements, depending on the duration of the contract).

Whereas maintenance and repair costs, condominium fees, insurance, Municipal Property Tax and Stamp Duty are tax deductible, capital improvements and mortgage interest are, generally, non-deductible.

Portuguese and EU/EEE residents may opt to aggregate rental income, in which case income will be subject to general progressive PIT rates, currently ranging from 12.5% to 48%.

Legal Entities

Rental income derived by legal entities is subject to Corporate Income Tax (CIT).

For Portuguese-resident legal entities, rental income forms part of the company's taxable profits and is taxed at the standard CIT rate of 19% (to which may be added a 1.5% Municipal Surtax and a State Surtax of up to 9%).

Taxable income is determined on a net basis, meaning that expenses directly related to the property (eg, depreciation, maintenance, Municipal Property Tax, insurance, financing costs) are usually deductible under the general rules.

Non-resident legal entities without a permanent establishment in Portugal are taxed solely on Portugal-sourced rental income, generally at a flat rate of 25%, with the deductions aligned with those applicable to individuals.

3.2 Business Profits

Tax-resident legal entities are taxed on their worldwide income, while non-resident legal entities are taxed solely on Portugal-sourced income.

Residents

As a general rule, the tax period corresponds to the calendar year, although taxpayers may elect to adopt a different tax period. The standard CIT rate is 19% (set at 18% for 2027 and at 17% from 2028 onwards). Entities that carry out, directly and primarily, an activity with an economic, agricultural, commercial, or industrial nature, and qualify as small or medium-sized or small- or mid-cap companies (SME), benefit from a CIT rate of 15% on the first EUR50,000 of taxable profit, with the 19% standard rate applying to the surplus.

A Municipal Surtax of up to 1.5% (depending on the municipality in which the business is carried out and as determined by the relevant municipality on an annual basis) also tends to apply. A State Surtax may also apply, as follows.

- Profits exceeding EUR1.5 million: 3%.
- Profits exceeding EUR7.5 million: 5%.
- Profits exceeding EUR35 million: 9%.

Certain expenses are subject to aggravated taxation through autonomous tax charges, with rates ranging from 5% to 35%, depending on their nature. These rates are increased by ten percentage points where the taxpayer reports a tax loss in the relevant period, except during the first and second years of activity.

Taxable profit matches the net accounting profit (determined under Portuguese generally accepted accounting principles), as adjusted by the CIT provisions.

As a general principal, all expenses are deductible to the extent that they are necessary for the purpose of generating taxable income and are properly documented. Some listed exclusions apply; these include the CIT itself and any other taxes directly or indirectly levied on income; undocumented or unproperly documented expenses; penalties and charges; and expenses related to vehicles exceeding specific limits.

Tax deductibility of net financial costs should be secured within existing interest barrier provisions, which cap the deduction at the highest of: (i) EUR1 million; or (ii) 30% EBITDA.Non-deductible net financial costs, as well any unused portion of the 30% threshold, may be carried forward for five periods.

Tax losses may be carried forward indefinitely, but for up to only 65% of taxable profit in the relevant tax period. Any unused portion remains available, however. The carry-forward of tax losses does not impact Municipal and State Surtaxes.

Non-Residents

Non-residents operating in Portugal through a Portuguese PE will be subject to Portuguese CIT on the profits attributable to that permanent establishment. Such profits are determined in accordance with the arm's length principle and the applicable domestic CIT provisions (as detailed above), as if the PE were a separate and independent entity conducting the same or similar activities under comparable conditions.

Portuguese-sourced business profits obtained by non-resident legal entities not attributable to a Portuguese PE are subject to CIT at a rate of 25%. However, under the applicable DTT, Portugal's taxing rights may be eliminated.

3.3 Passive Income

Dividends

Dividends paid to resident individuals are subject to tax at a flat rate of 28%, unless the beneficiary opts for aggregation. In this case, only 50% of the dividends are included and taxed at the progressive PIT rates.

Where the distributing entity is resident in Portugal, the payment is subject to withholding tax. Dividends received from non-resident legal entities may benefit from a foreign tax credit in respect of tax paid in the source state.

Dividends paid to non-resident individuals are, as a rule, subject to withholding tax at a rate of 28%. This rate may be reduced under the applicable DTT, provided that Form 21-RFI and a valid tax residence certificate are submitted.

Dividends paid to resident legal entities are subject to withholding tax at a rate of 25%, which operates as a payment on account of the final CIT liability where the shares have not been held for an uninterrupted period of at least one year and do not represent at least 10% of the share capital or voting rights of the distributing entity. Dividends are taxed at the standard CIT rate of 19% (with a 15% rate applying to the first EUR50,000 for SMEs), unless the participation exemption regime applies. In this case, dividends are exempt from CIT, provided that, inter alia, a minimum 10% shareholding is held for at least one year (or the shareholder undertakes to hold it for such period).

As a general rule, dividends paid to non-resident legal entities are subject to withholding tax at a domestic rate of 25%. A CIT exemption may apply to divi-

dends distributed by a Portuguese company subject to, and not exempt from, Portuguese CIT, provided that a qualified participation is held (10% of the share capital or voting rights for an uninterrupted period of at least one year) and the qualified parent company requirement is met. The exemption is conditional upon compliance with EU anti-abuse provisions and beneficial ownership requirements, as well as the submission of the relevant supporting documentation by the shareholder.

Where the exemption does not apply, the 25% withholding tax rate may be reduced under an applicable DTT, subject to the submission of Form 21-RFI and a valid tax residence certificate.

Interest & Royalties

Under domestic law, interest paid to resident individuals is generally subject to withholding tax at a final rate of 28%, unless the taxpayer opts for aggregation, in which case the income is taxed at the applicable progressive PIT rates. Royalties are taxed under the general Personal Income Tax (PIT) provisions at progressive rates and may be subject to withholding tax on account of the final liability.

As a general rule, interest and royalties paid to resident legal entities are subject to withholding tax at 25%, operating as a payment on account of the final CIT liability, unless the special tax consolidation regime applies (in which case no withholding tax applies).

Interest and royalties paid to non-residents are, as a rule, subject to withholding tax at a domestic rate of 25% (legal entities) or 28% (individuals).

These rates may be reduced under an applicable DTT or, in the case of qualifying associated EU companies, reduced to 0% under the Interest & Royalties Directive, provided that the relevant conditions are met.

The application of a reduced rate or exemption is conditional upon the non-resident recipient providing the Portuguese payer with the required documentation (including Form 21-RFI, where applicable) and satisfying the beneficial ownership and anti-abuse requirements.

3.4 Capital Gains

In Portugal, capital gains correspond to the gains arising from the disposal for consideration of certain assets or rights and are essentially divided into two main categories: immovable property capital gains and securities (or movable) capital gains.

The former generally result from the disposal of immovable property, while the latter arise from the transfer of shareholdings, securities or other financial instruments.

Immovable Property

Immovable property capital gains realised by (resident and non-resident) individuals or non-resident legal entities are calculated as the difference between: (i) sale value; and (ii) acquisition value, increased by: (a) expenses related to improvements carried out during the 12 years preceding the disposal; and (b) costs inherent to the acquisition and sale of the property. The acquisition value may be adjusted by the applicable inflation (currency devaluation) coefficients, provided that at least 24 months have elapsed since the acquisition date.

For individuals, 50% of the resulting gains is included in taxable income and subject to the progressive PIT rates, ranging from 13% to 48%, with an additional solidarity surcharge of 2.5% or 5% applying where taxable income exceeds EUR80,000. A full exemption may apply under the rollover regime, subject to the fulfilment of the relevant statutory requirements.

For non-resident legal entities without a PE in Portugal, immovable property capital gains are generally subject to CIT at a flat rate of 25%, unless reduced under an applicable DTT.

Capital gains realised by resident legal entities from the disposal of immovable property are calculated as the difference between: (i) sale value; and (ii) acquisition value, the latter being reduced by tax-deductible depreciation, impairment losses and other value adjustments, and updated by the applicable inflation (currency devaluation) coefficients where at least two years have elapsed since the acquisition date.

Immovable property capital gains are subject to CIT. A 50% rollover relief may apply where the proceeds are reinvested in eligible tangible fixed assets, provided that the disposed property is not, and was not required to be, recognised as investment property. Please refer to **3.2 Business Profits** for the applicable CIT rates.

Securities

Capital gains arising from the disposal of shares are calculated as the difference between: (i) sale value; and (ii) acquisition value, the latter being adjusted by the applicable inflation (currency devaluation) coefficients where at least 24 months have elapsed since the acquisition date.

In case of individuals, such gains are, as a rule, subject to taxation at a flat rate of28%. An effective rate of 14% may apply where the shares relate to a micro or small company, provided that the statutory requirements are met.

However, capital gains must be mandatorily aggregated with the taxpayer's remaining income and taxed at progressive PIT rates where they derive from assets held for less than 365 days and the taxpayer's taxable income, including the capital gain, equals or exceeds EUR86,634.

Non-resident individuals may, in principle, benefit from an exemption from Portuguese tax on capital gains arising from the disposal of shares. However, this exemption does not apply where: (i) the individual is resident in a jurisdiction included in the Portuguese list of clearly more favourable tax regimes; or (ii) the shares disposed of relate to a company resident in Portugal whose assets consist, directly or indirectly, of more than 50% immovable property located in Portugal, including cases where the company holds a controlling interest in other Portuguese resident entities meeting that threshold. A similar effect (exemption) may also result from the application of an applicable DTT, where the treaty allocates exclusive taxing rights to the state of residence of the transferor.

Capital gains realised by resident legal entities are included in the entity taxable profits and subject to CIT at the applicable rates (please refer to **3.2 Business Profits**).

However, such gains may be exempt under the participation exemption regime, provided that: (i) the company whose shares are disposed of is not resident in a blacklisted jurisdiction and is subject to and not exempt from corporate tax; (ii) the company is not, nor should it be treated as, fiscally transparent; (iii) the shareholder holds, directly or indirectly, at least 10% of the share capital; and (iv) such participation has been held uninterruptedly for a minimum period of one year.

The exemption does not apply where more than 50% of the assets of the company whose shares are being disposed of consist, directly or indirectly, of immovable property located in Portugal, except where such immovable property is allocated to an agricultural, industrial or commercial activity other than the purchase and sale of immovable property.

Capital gains realised by non-resident legal entities without a PE in Portugal are, in principle, exempt from CIT under the Portuguese domestic exemption.

This exemption does not apply where:

- the non-resident legal entity is directly or indirectly held, by more than 25%, by Portuguese resident legal entities, unless it is resident in another EU/EEA member state bound by administrative cooperation in tax matters;
- the transferor is resident in a jurisdiction included in the Portuguese list of clearly more favourable tax regimes;
- more than 50% of the assets of the company whose shares are being disposed of consist, directly or indirectly, of immovable property located in Portugal;
- at any time during the 365 days preceding the transfer, the value of the shares or rights in a (non-resident) legal entity derived, directly or indirectly, more than 50% of their value from immovable property located in Portugal, except where such property is allocated to an agricultural, industrial or commercial activity other than the purchase and sale of immovable property.

A similar effect (exemption) may also result from the applicable DTT, where the treaty allocates exclusive taxing rights to the state of residence of the transferor.

Where neither the domestic exemption nor the DTT provides for relief, capital gains are subject to CIT at a rate of 25%.

3.5 Employment Income

As a rule, any remuneration paid or made available to an employee in connection with an employment relationship (including salary, bonuses and benefits in kind) qualifies as employment income and is subject to Portuguese PIT.

For Portuguese tax residents, employment income is taxed at the general progressive rates, currently ranging from 12.5% to 48%. A solidarity surcharge further applies at a rate of 2.5% on the portion of taxable income exceeding EUR80,000, and 5% on the portion exceeding EUR250,000.

Specific regimes may apply in certain cases, notably under the former and the new NHR regime or the regime applicable to former tax residents returning to Portugal.

Non-residents are generally subject to withholding tax at a flat rate of 25% on Portuguese-sourced employment income.

Portuguese domestic law does not establish a specific regime governing short-term assignments or cross-border employment. Tax treatment depends on: (i) the individual's tax residence status; (ii) the applicable source-of-income provisions (namely, where the employment is effectively exercised); and (iii) the application and provisions of any applicable DTT.

Likewise, there are no specific income tax provisions addressing remote working arrangements as such. Accordingly, one must resort to general residence and source principles and provisions. From a corporate tax perspective, remote working arrangements may give rise to PE concerns where an employee performs activities in Portugal on behalf of a foreign employer, requiring a case-by-case assessment.

3.6 Other Income

Portugal taxes crypto-asset income earned by individuals based on its nature: as business/professional crypto activities (including mining/validation), as investment-type returns from crypto operations (generally taxed at 28%, with an option to aggregate), and as capital gains. Where crypto-assets do not qualify as securities, capital gains are generally taxed at 28% if held for less than 365 days, while gains (and losses) on assets held for 365 days or more are excluded from taxation, subject to the EU/EEA or treaty/exchange-of-information condition. Crypto-to-crypto exchanges are, in principle, tax-deferred until conversion into fiat currency or other non-crypto consideration.

For legal entities (and individuals subject to organised accounting), crypto results are included in taxable profits under the general CIT-based rules.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As of 2026, Portugal has not enacted specific provisions implementing the OECD's simplified and streamlined approach for baseline marketing and distribution activities (Amount B).

As such, the existing transfer pricing framework continues to be mainly governed by domestic provisions that largely align with the OECD Transfer Pricing Guidelines and expressly state that the Guidelines should be taken into account in the application of the arm's length principle. Accordingly, there are no material deviations from the (old) OECD framework in this respect.

In addition, according to Portugal's most recent OECD Transfer Pricing Country Profile, the adoption of the simplified approach remains under consideration. Portugal therefore appears to be monitoring international developments and awaiting further alignment and practical experience in other jurisdictions before acting.

4.2 Pillar One – Amount A

Portugal is a member of the OECD/G20 Inclusive Framework on BEPS and has taken part in the discussions relating to Pillar One.

That said, Portugal has not issued a separate or detailed public statement setting out a specific position on Amount A. Portugal's involvement has therefore been shown primarily through its participation in the multilateral negotiations, rather than through distinct domestic policy communications.

As a member state of the EU, Portugal's approach is generally consistent with the common position developed at EU level. At said level, the European Commission has indicated that the implementation of Amount A within the EU is expected to proceed following the entry into force of the OECD Multilateral Convention, the final text of which remains under negotiation.

4.3 Pillar Two

Portugal has implemented the global minimum tax under Pillar Two into domestic law.

As expected, the Portuguese domestic law establishes a 15% minimum effective taxation standard applicable to large multinational enterprise (MNE) groups and large-scale domestic groups with consolidated annual revenues of at least EUR750 million in at least two of the four preceding tax periods, consistent with the applicable Directive and the OECD threshold.

The Income Inclusion Rule (IIR) and the Qualified Domestic Minimum Top-Up Tax (QDMTT) apply to tax periods beginning on or after 1 January 2024. The Undertaxed Profits Rule (UTPR) applies to tax periods beginning on or after 1 January 2025.

As a result, the main operative components of Pillar Two have been effective in Portugal since the 2024.

Overall, Portugal's implementation closely follows the structure, definitions, and timelines set at EU and OECD levels, ensuring consistency with the broader international rollout of the global minimum tax while incorporating the rules directly into Portuguese domestic law.

4.4 Specific Features or Deviations of Pillar Two

The Portuguese legislation expressly states that guidance issued within the OECD/G20 Inclusive Framework on Pillar Two must be considered when interpreting and applying the domestic minimum tax provisions. This includes the official Commentary to the Model Rules as well as any subsequent Administrative Guidance endorsed by the Inclusive Framework.

Accordingly, the domestic regime is intended to be interpreted consistently with the evolving international framework, thereby promoting alignment with the technical clarifications and interpretative positions developed at OECD level.

4.5 Digital Services Tax

Portugal does not impose a broad, standalone digital services tax.

Instead, the Portuguese system relies on sector-specific charges targeting certain digital and audiovisual business models. One notable example arises under the audiovisual and cinema regime, which provides for a 4% levy on certain audiovisual commercial communications, including those disseminated through video-sharing platform services and on-demand audiovisual services (commonly referred to as Advertising Tax).

Under the same legislative framework, subscription-based video-on-demand providers may also be subject to an annual charge of 1% over relevant income (usually referred as Netflix Tax).

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Portuguese law defines tax fraud as intentional conduct aimed at preventing the correct assessment or payment of tax, avoiding the payment of tax due or obtaining undue tax advantages, refunds or financial benefits resulting in a loss of public revenue. Criminal

liability generally requires that the unlawful advantage involved be at least EUR15,000.

Tax fraud becomes aggravated where specific qualifying circumstances are present, such as the use of complex concealment mechanisms, falsified documentation or structures involving entities established in clearly more favourable tax jurisdictions.

Although distinct concepts, tax evasion and tax avoidance are not defined in a single statutory provision.

Tax evasion generally refers to unlawful conduct aimed at reducing or eliminating a tax liability, such as the concealment of income, omission of taxable transactions or falsification of information. It may give rise to administrative penalties or criminal liability under the General Regime for Tax Infringements (RGIT), notably in cases of tax fraud or abuse of trust.

By contrast, tax avoidance concerns the use of lawful arrangements to reduce or defer tax liabilities within the limits of the law, meaning that lawful tax planning is permitted provided the arrangements in question reflect economic substance or a valid business purpose. However, arrangements deemed artificial or non-genuine and primarily designed to obtain undue tax advantages may be challenged under the Portuguese General Anti-Abuse Rule (GAAR).

In cross-border situations, substance and functional analysis are central to the assessment of potentially abusive structures. Particular attention must be given to treaty-based anti-abuse provisions introduced through the Multilateral Instrument (MLI), including the Principal Purpose Test (PPT), which applies to most of Portugal's DTTs. In practice, the analytical approach under the PPT is broadly aligned with the principles underpinning the domestic GAAR, focusing on the purpose and economic substance of the arrangements at stake.

5.2 Anti-Avoidance Mechanisms

Portugal relies on a combination of general and specific anti-avoidance provisions, many of which were introduced by EU Law or international treaties, including (among others):

- the Domestic GAAR;
- the interest barrier provision;
- Controlled Foreign Companies provisions;
- exit taxation provisions;
- anti-hybrid mismatch provisions; and
- transfer pricing provisions and documentation obligations.

These substantive provisions are rounded out by extensive audit and monitoring powers vested in the PTA. Through audits, targeted inspections and risk-based analysis (including cross-border exchange of information), the PTA actively identifies and challenges aggressive tax structures.

While some regimes are relatively recent – eg, the anti-hybrid mismatch provisions, introduced following the transposition of Anti-Tax Avoidance Directive ATAD II in 2020 – their practical application requires a detailed understanding of the tax treatment of the relevant arrangements in other jurisdictions. In practice, the operation of these provisions depends significantly on the availability of cross-border information and the accurate identification of mismatches between legal systems. As such, the extent to which the PTA will actively invoke and enforce these provisions remains to be seen.

Treaty-based anti-abuse provisions, namely those included in the MLI – which introduced additional anti avoidance provisions and the PPT – also apply in every DTT concluded by Portugal.

5.3 Blacklists and Non-Cooperative Jurisdictions

Portugal maintains a list of jurisdictions considered to have clearly more favourable tax regimes (blacklisted jurisdictions). It should be noted that the country's domestic blacklist currently includes approximately 75 jurisdictions (following the recent removal of Hong Kong, Liechtenstein and Uruguay), whereas the EU's list of non-cooperative jurisdictions comprises only about ten jurisdictions, reflecting different legal bases, assessment criteria and policy objectives.

Transactions involving listed jurisdictions may trigger higher withholding rates, limitations on cost deduction and exemptions, and enhanced reporting require-

ments. These defensive measures are particularly relevant in immovable property investment, cross-border financing and service arrangements.

5.4 Reporting Obligations and Disclosure Regimes

Portuguese relevant reporting mechanisms include mandatory disclosure provisions on certain operations (Directive on Administrative Cooperation (DAC) 6), Common Reporting Standard (CRS)-based financial reporting, beneficial ownership registration (RCBE), and country-by-country (CbCR) reporting.

Taken together, these instruments significantly enhance transparency in cross-border structures and provide the PTA with the necessary tools to pursue investigations, typically through targeted tax audits and exchange of information procedures.

Notwithstanding the above, although Portugal has enacted regulatory and reporting provisions and has publicised the existence and number of reported arrangements, there is no continuously updated, publicly accessible official list of specific scheme names in the form of a blacklist of abusive schemes; rather, the regime relies on the hallmarks and existing instruments and powers vested in the PTA.

5.5 Role of Tax Authorities and Enforcement Measures

The PTA is vested with broad audit and investigative powers within the context of tax audits enabling it to access accounting records, tax documentation and supporting commercial documents, review electronic accounting systems and digital archives, request clarifications from taxpayers and third parties, conduct on-site inspections at business premises, and perform physical inventory checks, where appropriate.

Access to banking information is permitted under specific statutory conditions, including cases involving serious tax offences or where there are indications of concealed income. Depending on the circumstances, judicial authorisation may be required.

Generally, tax audits should be initiated within the statute of limitations (generally four years). Where criminal conduct is suspected (whether or not in the course of tax audits), the PTA is required to report the matter to the Public Prosecutor's Office (please see **6.1 Tax Penalties**). Criminal investigations are then conducted under judicial supervision, and coercive measures – including searches and seizures – may be ordered by a judge.

Cross-border cases increasingly involve exchange of information under DTTs, EU directives and multilateral instruments. International cooperation between tax authorities has become a central enforcement tool, particularly in cases involving offshore structures or aggressive tax planning.

6. Penalties and Sanctions

6.1 Tax Penalties

Portugal does not provide for a separate penalties regime for cross-border transactions. Instead, international arrangements fall within the scope of the general tax enforcement regime whenever they result in non-compliance with domestic tax obligations. This may involve underpayment of tax, failure to withhold tax, or breaches of reporting and documentation requirements linked to cross-border activities.

Penalties are primarily governed by the RGIT. The RGIT distinguishes between administrative offences, which are generally punishable by fines, and tax crimes, which in more serious cases may give rise to criminal fines or imprisonment.

The PTA is responsible for detecting infringements, conducting audits and initiating administrative offence proceedings. It issues assessments and determines applicable fines under the RGIT. Where the circumstances suggest the commission of a tax crime, the matter is referred to the Public Prosecutor's Office. Criminal investigations are then conducted under judicial supervision, and the competent criminal courts determine liability and impose any sanctions.

In cross-border cases, international cooperation mechanisms may be used to obtain evidence, exchange information or coordinate investigative actions with foreign authorities.

6.2 Criminal Penalties

Under Portuguese law, tax crimes may be punishable by imprisonment or by criminal fine. Criminal fines are calculated on the basis of "day-fine" system, where the court determines a number of day units and assigns a monetary amount to each day. For individuals, the daily amount ranges from EUR1 to EUR500; for legal entities, it ranges from EUR5 to EUR5,000.

Tax fraud is punishable by imprisonment of up to three years or up to 360 day-fines, while aggravated tax fraud is punishable, for individuals, by imprisonment for from one to five years and, for legal entities, by a fine ranging from 240 to 1,200 day-fines, increasing to two to eight years' imprisonment for individuals and 480 to 1,920 day-fines for legal entities where the undue advantage exceeds EUR200,000.

Failure to pay over tax withheld or collected is punishable by imprisonment of up to three years or a penalty of up to 360 day-fines, increasing to one to five years' imprisonment for individuals and penalties of between 240 and 1,200 day-fines for legal entities where the amount exceeds EUR50,000.

6.3 Interaction Between Tax and Criminal Procedures

Most tax offences and criminal cases in Portugal originate within the scope of a tax audit conducted by the PTA, during which the PTA assesses not only the correctness of the taxpayer's position but also whether the facts identified may constitute an administrative offence or a tax crime.

The inspection report usually addresses both aspects, setting out any additional tax and interest assessed and indicating whether the same facts may trigger administrative or criminal liability. Consequently, tax assessments and infringement proceedings frequently commence in parallel.

Where the matter qualifies as an administrative offence, the PTA initiates the relevant procedure. If there are indications of a tax crime, the case must be referred to the Public Prosecutor. Although administrative and criminal proceedings may arise from the same facts, criminal proceedings take precedence. Once a formal indictment is issued, the administrative offence case is dismissed.

Tax disputes, administrative offence proceedings and criminal proceedings may run concurrently, as they are legally autonomous. However, if the offence depends on whether the tax assessment is upheld, the infringement proceedings are suspended until the tax dispute is finally resolved.

Administrative offence proceedings begin with an investigation conducted by the PTA, followed by a statement of charges, where appropriate. The taxpayer may present a defence before a final decision is issued. Decisions imposing fines may be challenged before administrative and tax courts, with the possibility of further appeal.

Criminal proceedings are governed by the general provisions of criminal procedure. The Public Prosecutor leads the investigation and determines whether to bring charges. If the case proceeds to trial, the criminal court rules on liability and sanctions, subject to appeal.

In summary, the PTA is responsible for audits, assessments and administrative offences proceedings, while the Public Prosecutor and criminal courts handle tax crimes. Administrative and tax courts review assessments and fines. Although tax and criminal functions are institutionally separate, the system allows coordinated parallel proceedings where based on the same facts.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Multilateral Instruments

Portugal's framework for administrative co-operation in tax matters is grounded in both multilateral and EU instruments. At global level, Portugal is a party to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol.

The Convention provides a comprehensive legal basis for exchange of information on request, spontaneous exchange, automatic exchange, simultaneous tax examinations and assistance in the recovery of tax claims.

In addition, Portugal implements internationally agreed standards developed within the OECD framework, including the CRS for the automatic exchange of financial account information and the CbCR framework between tax authorities.

EU Framework

As an EU member state, Portugal is bound by DAC, the EU Directive on Administrative Cooperation, as amended (DAC2 through DAC8). These successive measures have significantly expanded the scope of automatic and spontaneous exchange of information within the EU, encompassing financial account data, advance cross-border rulings, country-by-country reports, mandatory disclosure of cross-border arrangements (DAC6), digital platform operators and crypto-asset reporting.

In addition, administrative co-operation in VAT matters is governed by Council Regulation (EU) No 904/2010, which directly applies in the member states and establishes mechanisms for information exchange, coordination and joint actions aimed at combating VAT fraud.

Recovery Assistance and Bilateral Treaties

Administrative co-operation in the recovery of tax claims within the EU is regulated by Council Directive 2010/24/EU. This Directive allows the PTA to request assistance from other member states in collecting tax debts and, conversely, to recover foreign tax claims in Portugal under harmonised procedures.

Portugal's extensive network of DTTs, largely based on the OECD Model, also includes exchange-of-information provisions. These facilitate the exchange of information with treaty partners outside the EU and complement both the multilateral and EU-based instruments.

Taken together, these instruments form an integrated system under which the PTA exchanges information, participates in joint administrative actions and provides mutual assistance in both assessment and enforcement matters.

7.2 Exchange of Information Clauses in Tax Agreements

Portugal exchanges tax information on an automatic, spontaneous and on-request basis.

Exchange of information on request is carried out pursuant to the DAC, as well as under DTTs or tax information exchange agreements concluded with non-EU jurisdictions. Spontaneous exchanges take place where the PTA identifies information that may be relevant to the tax authorities of another jurisdiction.

Automatic exchange applies to multiple categories of data, including financial account information (CRS/DAC2), country-by-country reports (DAC4), advance cross-border rulings, reportable cross-border arrangements (DAC6), and, more recently, information relating to digital platforms (DAC7) and (soon to be) crypto-assets (DAC8). Portugal also exchanges financial account information with the US under the FATCA intergovernmental agreement.

7.3 Other Forms of International Tax Collaboration

Portugal has participated in the OECD's International Compliance Assurance Programme (ICAP) since 2024.

At EU level, Portugal allows for simultaneous controls and joint audits with other member states under the DAC, as implemented and amended by domestic provisions. These mechanisms enable coordinated audits and, where appropriate, the participation of foreign officials in administrative proceedings.

Portugal is also a party to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which enables exchange of information and other forms of administrative cooperation with a broad range of jurisdictions.

In the field of VAT, Portugal participates in Eurofisc, the EU network established to enhance cooperation and combat cross-border VAT fraud.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Portugal does not maintain a standalone domestic Mutual Agreement Procedure (MAP) regime independent of its international obligations.

The MAP framework is primarily based on Article 25 of Portugal's DTTs, which generally follow the OECD Model.

At EU level, Portugal has implemented Directive (EU) 2017/1852, providing for a structured MAP procedure and, where necessary, mandatory binding arbitration between member states.

Portugal also applies the EU Arbitration Convention in cases involving transfer pricing and permanent establishment disputes, and certain treaties, as modified by the MLI, may include mandatory arbitration provisions depending on Portugal's reservations.

8.2 Application Deadlines

The applicable deadline in Portugal is generally three years from the date of first notification of the action giving rise to the dispute, subject to confirmation under the relevant DTT or legal instrument.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is available in Portugal in cases falling within the scope of EU law and under certain DTTs (including those modified by the MLI), but it is not universally applicable under all DTTs nor provided as a standalone domestic mechanism.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Portugal has an advance pricing agreement (APA) programme established under its domestic law. APAs allow taxpayers to agree in advance with the PTA on the transfer pricing methodology applicable to transactions with related parties.

APAs may be unilateral, bilateral or multilateral. Where the relevant transactions involve associated legal entities resident in jurisdictions with which Portugal has concluded a DTT, the taxpayer may request a bilateral or multilateral APA, involving the competent authorities of the relevant jurisdictions.

The procedure is initiated through a formal request submitted to the PTA. Once concluded and accepted by the taxpayer, the APA is binding on the tax authorities for the agreed period.

9.2 Other Mechanisms

Portuguese law provides for binding rulings as a mechanism to obtain advance tax certainty. Taxpayers may request a binding ruling from the PTA regarding the interpretation and application of tax law to a specific factual situation, including both domestic and international tax matters, such as cross-border transactions, PE issues and DTT interpretation.

Binding rulings are issued upon request and are binding on the PTA in relation to the requesting taxpayer, provided that the facts disclosed are complete and accurate and that the relevant legal and factual circumstances remain unchanged. An expedited procedure is available, subject to the payment of a statutory fee.

Trends and Developments

Contributed by:
Tânia de Almeida Ferreira
CCA Law Firm

CCA Law Firm embraces adaptability and responsiveness in a rapidly developing world across diverse scenarios and sectors. The firm is future-focused, helping organisations achieve bold, effective and forward-thinking solutions. Innovation is central to CCA's culture, driving it to break barriers, challenge stereotypes and foster a dynamic work environment that attracts top talent. Committed to creating value, CCA continuously seeks new ways to deliver knowledge and strategic support to its clients and partners. The firm's diverse client base includes multinational technology companies, SMEs, venture capital-backed startups, family businesses and private clients, regardless of size or industry. CCA has offices in Lisbon and Oporto. Its business-oriented professionals share a common ambition: to transform the way legal services are delivered.

Author



Tânia de Almeida Ferreira has almost 25 years' experience in tax law and is recognised for her technical precision, strategic insight and expertise in complex tax matters. She advises national and international investors at CCA Law Firm throughout the full investment lifecycle from structuring to divestment, ensuring robust and tax-efficient solutions through regulated and non-regulated structures. Her practice focuses on financial and real estate taxation, M&A, corporate restructurings and business reorganisations. Experienced in complex negotiations across sectors, Tânia combines strong technical knowledge with a deep understanding of clients' businesses, anticipating risks and delivering integrated, strategic solutions that ensure legal certainty and effective risk mitigation.

CCA Law Firm

Edifício Diogo Cão,
Doca de Alcântara Norte
1350-352 Lisboa
Portugal

Praça do Bom Sucesso, Nº 131
Edifício Península, 2.º andar, sala 204
4150-146 Porto
Portugal

Tel: +351 213 223 590
Fax: +351 213 223 599
Email: ccageral@cca.law
Web: www.cca.law

Contributed by: Tânia de Almeida Ferreira, **CCA Law Firm**

Alongside broader tax trends in Portugal, such as increased transparency and reporting, data-driven audits, stronger anti-abuse scrutiny (GAAR/PPT) and ongoing international alignment (EU/OECD initiatives), this note focuses on four developments selected for their immediate, day-to-day relevance to market participants. These elements are: i) the extension and recalibration of SIFIDE; ii) the ESOP regime for start-ups; iii) the proposed 6% VAT rate for housing construction; and iv) the growing use of SIC structures in real estate.

Extension and Reform of the SIFIDE R&D Tax Incentive

Portugal's System of Tax Incentives for Business R&D (SIFIDE) has been a central feature of the corporate tax landscape for decades, supporting private-sector innovation by allowing companies to deduct a percentage of eligible R&D expenditure from their Corporate Income Tax (CIT) liability. While SIFIDE has been amended and reconfigured over time, the current framework (SIFIDE II) remains one of the most relevant tax instruments for R&D-intensive groups operating in Portugal.

A one-year extension to 2026: continuity, but with a clear "transition year" signal

Following several prior renewals, the government has advanced a legislative package aimed at extending the "direct" SIFIDE II regime to cover the 2026 tax period. For calendar-year taxpayers, this means that qualifying R&D expenditure incurred during 2026 should continue to generate SIFIDE credit to be claimed in the relevant CIT return, subject to the ordinary rules and the supporting technical documentation typically required for SIFIDE claims.

From a policy standpoint, the fact that the extension is limited to one year, as opposed to a multi-year renewal, is a meaningful signal, as it points to a managed transition – maintaining legal certainty for taxpayers' 2026 planning while preserving flexibility for a broader redesign thereafter. In parallel, the Portuguese government has indicated that a dedicated working group will be tasked with developing proposals for a deeper review of the regime during 2026, reinforcing the view that the current extension is a bridge to more structural reform.

Recalibration: ending "indirect SIFIDE" for new fund contributions

A defining element of the reform is the decision to discontinue, going forward, the fund-based route ("indirect SIFIDE"), ie, the ability for companies to generate SIFIDE benefits through contributions to investment funds that, in turn, invest in target companies expected to carry out qualifying R&D activities.

The policy rationale is clear: public materials supporting the reform highlight a structural mismatch between the tax benefit generated and the effective execution of R&D investment, with concerns that significant amounts have remained parked in fund structures rather than being translated into timely, real-economy R&D outcomes. The reform therefore shifts the incentive back towards a substance-based model, where relief is more closely anchored to actual R&D activity and verifiable qualifying expenditure.

Importantly, this is not framed as a retroactive change. Instead, it operates prospectively, while introducing targeted transitional rules for amounts already contributed.

Transitional rules for existing SIFIDE fund capital: a longer deployment window and "productive innovation" allowance

To address the practical reality of substantial committed – but not yet fully deployed – capital in existing SIFIDE fund structures, the legislative package includes transitional measures for contributions made up to the end of 2025.

Key points include the following.

- *Extended time to invest* The framework moves to a five-year investment window for funds to meet minimum investment requirements in investee companies, and for investee companies to demonstrate that the relevant investments are effectively carried out within the required perimeter.
- *"Productive innovation" as an eligible application (within limits)* Up to 20% of the relevant contributions may be channelled into productive innovation investments, provided these are directly derived from and functionally complementary to R&D activities completed in the previous three years.

The rules also introduce quantitative constraints (including a per-fund cap and a per-investee cap) and anchor the eligible categories to the Portugal 2030 innovation framework, thereby narrowing interpretative drift and helping align the tax measure with broader industrial policy tools.

- *Economic focus, mobilising capital* these transitional provisions are explicitly designed to avoid a scenario where capital remains immobilised, while still requiring a demonstrable link to R&D and innovation outcomes.

From a practitioner's perspective, these transitional rules will likely become a focal point for compliance, governance and evidence, including: (i) documentation of the R&D-to-innovation linkage; (ii) traceability of equity-funded eligible expenditure categories; and (iii) proof that minimum investment thresholds and deadlines are met (or, where breached, that the fiscal consequences are correctly accounted for).

Procedural simplification: but not a relaxation of the evidentiary burden

The reform also removes a step widely viewed as administratively burdensome in the fund route: the prior "suitability" recognition by the National Innovation Agency (ANI) for investee companies. That said, this is not a wholesale de-formalisation of SIFIDE. The system remains driven by substantive eligibility, and the package makes it clear that verification of whether investments are effectively carried out as qualifying R&D (or permitted complementary innovation) remains central.

In practice, this change reduces an ex ante gatekeeping step but is likely to increase the importance of ex post validation, particularly in scenarios that sit closer to the boundaries of what qualifies as R&D versus innovation/industrial deployment.

Technical amendments: groups and cumulation

For larger taxpayers, the reform both clarifies how SIFIDE is computed under the tax consolidation regime (RETGS), referring to the group's aggregate increase in qualifying expenditure, and reinforces anti-cumulation rules to prevent double benefits where the same outlay is financed through SIFIDE fund mechanisms or other public support.

Outlook: a transition year, likely with increased scrutiny

For 2026, taxpayers should plan on the basis that SIFIDE remains available – yet in a transitional environment. The combination of: (i) a one-year renewal; (ii) the structural retreat from fund-based access; and (iii) the emphasis on effectiveness and transparency strongly suggests that post-claim scrutiny will remain a defining feature, especially in higher-value cases, and in fact patterns closer to the eligibility perimeter.

ESOP Regime for Startups: Option-Based Design, Limited Flexibility and Controversy Risk

Portugal has introduced a preferential tax framework for employee equity incentives aimed at strengthening talent attraction and retention in startups and innovation-led businesses. The regime is built around the Statute of Tax Benefits (EBF) and applies to employment-income gains derived from equity incentive plans created in favour of employees or members of corporate bodies.

Core mechanics: a special 28% rate applied to only 50% of the gain, with taxation typically aligned to a liquidity event

Where the conditions are met, only 50% of the relevant gain is considered, and a parallel provision brings these gains under the 28% autonomous ("special") rate (with a general option for residents to elect aggregation).

Taxation is generally triggered at the first of: (i) disposal of the securities acquired through the exercise of the option; (ii) loss of Portuguese tax resident status (with the regime linking the relevant moment back to the exercise of the option/right); or (iii) transfer of the securities for no consideration.

Structural constraint: benefit is drafted around "exercise/subscription", which effectively anchors the regime to option-style plans

While the underlying employment-income provision refers broadly to "plans of options, subscription, attribution or other equivalent effect", the preferential regime is operationally anchored to the acquisition of securities "by way of exercise" (or subscription) of an option/equivalent right, and the computation rules rely on an exercise/subscription price.

As a result, the regime is, in practice, most straightforwardly compatible with option-type structures, and it is materially less clear how it should apply to direct share grants or modern equity instruments frequently used internationally (eg, RSUs), where there may be no exercise price and where the economic event is driven by vesting/delivery mechanics rather than option exercise. This drafting choice reduces flexibility for startups and groups seeking alignment with standard international remuneration tools and increases the scope for interpretative controversy.

Timing constraints: first-year flexibility is limited to the "startup route", leaving a gap for newly incorporated non-startups

The preferential regime allows the startup condition to be met in the year of plan approval where that is the company's first year of activity, but this carve-out is limited to the startup route. For other eligible issuers (eg, SMEs or "innovation" entities), the law remains tied to the year prior to plan approval, which can make the regime unavailable for plans approved in the incorporation year.

This asymmetry is not merely theoretical: the Portuguese Tax Authority (PTA) explicitly confirms in a binding ruling that, outside the startup route, a plan approved in the same year the company was incorporated cannot satisfy the "previous year" SME condition. From a policy perspective, this is difficult to reconcile with how early-stage companies typically rely on equity incentives from inception, and is fertile ground for disputes in borderline cases.

Litigation and compliance risk: definitional thresholds, valuation, and corporate governance exposure

The regime concentrates litigation and compliance risk around issuer eligibility tests (with potential cliff effects), valuation and timing mechanics tied to option exercise and disposal, and corporate governance exposure, as the granting entity may become subsidiarily liable for Personal Income Tax (PIT) if it confirms eligibility (or fails to reply within the statutory deadline) and the conditions are later found not to be met.

Outlook: Strengthening Portugal's equity incentive regime

Portugal's regime is an important policy signal, but its effectiveness as a competitiveness tool will likely depend on further refinement – particularly greater functional neutrality across equity instruments, a reassessment of first-year access outside the startup route, and clearer administrative guidance to reduce controversy and ensure predictable implementation in cross-border and fast-growth scenarios.

Reduced VAT Rate on "Moderately Priced" Housing Construction and Rehabilitation: Policy Intent and Market Implications (Portugal)

Portugal's 2026 housing tax package includes an enabling framework to extend the reduced VAT rate (6%) to construction and rehabilitation works (*empreitadas*) relating to residential assets, alongside a partial VAT refund mechanism for individuals building their own primary home.

Legislative scope and affordability caps

The reduced-rate measure is conditional on "moderate" affordability limits, with the rent capped at 2.5× the 2026 statutory minimum monthly wage and the sale price capped at the upper threshold of the second Property Transfer Tax (IMT) bracket.

On the numbers, this mechanism is intentionally index-linked (and therefore not perfectly static year-on-year).

The 2026 minimum monthly wage is EUR920 and, therefore, the rent cap implied by the authorisation is EUR2,300/month, being the upper limit of the second bracket of EUR660,982.

Timing and "operational readiness" (a key market issue)

A practical point for sponsors and developers is that policy approval does not automatically translate into Day 1 operability. Market-facing analyses continue to note that, in early 2026, the reduced-rate construction measure is not yet fully operational, pending completion of legislative/implementing steps (and, in practice, interpretative guidance).

The enabling framework also points to a multiyear eligibility window (with objective project "start" markers). In particular, it references applicability to works where the procedural initiative begins between 25 September 2025 and 31 December 2029, with VAT becoming chargeable up to 31 December 2032.

In parallel, the housing package is built around the proposed Investment Contracts for Rental (CIA), and published analysis of the draft indicates the CIA regime is expected to produce effects from 1 June 2026 (a relevant milestone because the reduced VAT strand is legislatively positioned alongside CIA type incentives).

Compliance mechanics and allocation of risk (where disputes may arise)

From a VAT/technical standpoint, the measure is framed around works contracts (*empreitadas*). This is an important limitation: it pushes market participants into contract structuring and documentary proof around the nature of the service, the eligible residential purpose, and affordability caps.

Equally important, the authorisation anticipates ex post controls and clawback logic. It specifically contemplates situations where the buyer does not allocate the property to their main home or (even if they do) does not remain in the property for at least 12 months, subject to statutory exceptions.

This design shifts the real economic risk to eligibility and monitoring covenants, robust audit files evidencing compliance with the "moderate" thresholds, and the contractual allocation of the VAT benefit (and any clawback exposure) between developers/contractors and end buyers.

Anti-abuse safeguards and audit focus

Given that eligibility is conditional upon objective affordability caps and project-specific criteria, the reduced-rate framework is likely to be administered applying a strong compliance lens. In practice, the Portuguese Tax Authority is expected to scrutinise: (i) artificial fragmentation of contracts or project phases; (ii) mischaracterisation of supplies (eg, re-labelling works to fit within the *empreitada* perimeter); and (iii) arrangements designed to remain formally within price/rent thresholds without reflecting the economic reality of the transaction. For developers and contractors, contemporaneous documentation (contracts, licensing, budgets, pricing assumptions and evidence supporting the moderate thresholds) will be central to mitigating audit and clawback risk.

Market implications (what matters for investors and developers)

The reduced rate measure is most economically relevant where VAT on construction is a real cost (eg, where output transactions are VAT exempt and input VAT is not fully recoverable). Where input VAT is broadly recoverable, the effect is typically less about the headline rate and more about cash flow timing (depending on whether the final mechanism operates via an upfront reduced rate or a refund/deduction architecture).

Finally, even if implementation is smooth, construction lead times mean the measure is unlikely to deliver immediate supply-side outcomes. Market commentary has flagged that legal clarity and workable administrative procedures will be critical to avoiding distortions and disputes (particularly for multiyear projects straddling implementation dates).

Use of Collective Investment Companies (SICs) in Real Estate: Conversions, Tax Profile and Evolving Policy Focus

Why SICs are showing up more often in real estate structures

Within the Portuguese regulated investment framework, SICs (corporate form collective investment undertakings (OIC)) can be used to hold real estate portfolios, including in closed ended alternative real estate strategies. In practice, a notable trend has been the conversion of existing joint stock companies (*sociedades anónimas*) into SICs to access the OIC tax framework and a fund-like regulatory perimeter.

Conversion and transfer taxes: binding rulings point to neutrality, but with caveats

Recent binding rulings issued by the PTA have confirmed that the conversion of a joint stock company (*sociedade anónima*) into a SIC, per se, does not trigger IMT nor Stamp Duty, on the basis that no transfer

of the underlying real estate occurs solely as a result of the conversion.

However, the same administrative practice highlights an important limitation that matters in structuring: the PTA's analysis is typically confined to the conversion, in itself, and does not pre-clear other steps that may be required to comply with the asset composition rules for regulatory purposes (or that may occur as part of the reorganisation). Those surrounding steps may independently fall within IMT/Stamp Duty charging provisions depending on the facts.

Corporate tax profile: exemption-driven, but not tax free

The attractiveness of SICs in real estate frequently turns on the tax regime for collective undertakings. Under this framework:

- SICs/OIC are subject to CIT, but their taxable profit excludes (subject to exceptions) the income categories that typically dominate investment vehicles (namely investment income, rental income and capital gains as mapped by reference to the PIT Code categories), with an exception, notably, where income derives from blacklisted jurisdictions.
- OIC are exempt from municipal and state surtaxes (*derrama municipal* and *derrama estadual*).
- As a rule, there is no obligation to apply CIT withholding on income obtained by OIC under this regime.

That said, experienced structuring needs to treat the regime as tax-reallocated rather than tax-eliminated: the overall burden often shifts to vehicle-level parafiscal taxation (including stamp duty mechanisms) and investor-level taxation upon distribution/redemption, depending on investor profile and residence.

A further policy signal worth noting is that the 2026 housing package expressly links the OIC perimeter to housing goals by contemplating reductions to Stamp Duty depending on the share of OIC assets placed under qualifying residential lease/sublease arrangements.

Anti-abuse and substance considerations

The combination of transfer-tax neutrality arguments around corporate conversions and the fund-like corporate tax profile available to collective investment undertakings makes SIC-based real estate structures particularly sensitive to anti-abuse scrutiny. In practice, conversions and surrounding steps may be tested against the domestic General Anti-Abuse Rule, especially where the factual pattern suggests that the predominant purpose is to secure an undue tax advantage (eg, avoiding IMT/Stamp Duty or replicating an indirect real estate transfer through a sequence of formal steps). This risk is heightened where the SIC operates in a highly concentrated, quasi-private holding configuration, with limited features typically associated with collective investment activity. For sponsors, the key risk mitigants are: (i) demonstrable commercial rationale; (ii) robust regulatory and governance substance consistent with the SIC perimeter; and (iii) careful mapping of any ancillary reorganisation steps to the applicable transfer-tax anti-avoidance rules (including, where relevant, rules addressing acquisitions of interests in real-estate-rich entities).

Policy tension and likely trajectory

The expanding use of SICs in real estate (including in more concentrated structures) raises an obvious policy question: how far preferential OIC tax treatment should extend where the economic profile resembles a private holding platform more than a classic collective investment product.

For 2026, the market trend reflects continued interest in SIC conversions (supported by increasing administrative precedent on transfer tax neutrality) alongside a growing need for demonstrable substance, governance and documentation discipline to sustain the intended "fund regime" tax profile under audit scrutiny.

Key Takeaways

The four topics discussed illustrate how policy is increasingly implemented through targeted incentives coupled with tight conditions and anti-abuse controls, making eligibility and documentation as decisive as the tax benefit itself for businesses and investors operating in Portugal in 2026.

PUERTO RICO



Law and Practice

Contributed by:
Simón Carlo Valentín, Anthony O. Maceira Zayas and Carlos M. Fontán
Maceira Zayas

Contents

1. Sources and Principles p.373
1.1 Domestic Sources of International Tax Law p.373
1.2 Hierarchy of Sources p.373
1.3 OECD Model/United Nations Influence on Treaty Practice p.373
1.4 Multilateral Instrument p.374

2. Territoriality, Residence and Permanent Establishment p.374
2.1 General Principle of Territorial Taxation p.374
2.2 Tax Residence of Individuals p.374
2.3 Taxation of Resident Individuals p.374
2.4 Taxation of Non-Resident Individuals p.374
2.5 Tax Residence of Legal Entities p.374
2.6 Definition of Permanent Establishment p.375

3. Taxation of Cross-Border Income p.375
3.1 Income From Immovable Property p.375
3.2 Business Profits p.375
3.3 Passive Income p.375
3.4 Capital Gains p.375
3.5 Employment Income p.375
3.6 Other Income p.376

4. OECD/G20 Global Tax Reform p.376
4.1 Pillar One – Amount B p.376
4.2 Pillar One – Amount A p.376
4.3 Pillar Two p.376
4.4 Specific Features or Deviations of Pillar Two p.376
4.5 Digital Services Tax p.377

5. Anti-Avoidance and Anti-Evasion Measures p.377
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.377
5.2 Anti-Avoidance Mechanisms p.377
5.3 Blacklists and Non-Cooperative Jurisdictions p.377
5.4 Reporting Obligations and Disclosure Regimes p.377
5.5 Role of Tax Authorities and Enforcement Measures p.377

6. Penalties and Sanctions p.377
6.1 Tax Penalties p.377
6.2 Criminal Penalties p.377
6.3 Interaction Between Tax and Criminal Procedures p.377

7. Administrative Co-Operation p.378
7.1 Legal Framework for Administrative Co-Operation p.378
7.2 Exchange of Information Clauses in Tax Agreements p.378
7.3 Other Forms of International Tax Collaboration p.378

8. Mutual Agreement Procedures and Arbitration p.378
8.1 Availability and Legal Basis p.378
8.2 Application Deadlines p.378
8.3 Mandatory Binding Arbitration p.378

9. Dispute Prevention p.378
9.1 Advance Pricing Agreements p.378
9.2 Other Mechanisms p.378

Maceira Zayas advises domestic and international clients on tax planning, compliance, corporate, regulatory and government affairs matters from its principal office in San Juan. The tax practice focuses on structuring and compliance across Puerto Rico and US federal tax regimes, including matters before the Puerto Rico Department of Treasury (Hacienda) and the Internal Revenue Service. The team counts three dedicated tax attorneys, with two additional corporate practitioners who regularly collaborate on tax-related mandates. The firm advises individuals and businesses on Puerto Rico's Act 60-2019 incentive framework, with depth in decree applications, annual compliance, incentive stacking, and the interaction between Puerto Rico and federal tax obligations. Recent engagements include advising the Senate of Puerto Rico on the Governor's proposed tax reform package, structuring a capital gains position generating approximately USD1.8 million in annual tax savings, and advising a business conglomerate on combining multiple Act 60 incentive categories.

Authors



Simón Carlo Valentín leads the tax practice at Maceira Zayas. A licensed attorney, CPA and notary public, he offers a multidisciplinary approach to advising investors and non-profits on corporate structuring, tax incentives and compliance. His extensive background includes roles at PricewaterhouseCoopers and BDO, serving as Vice President for a major federal contractor, and acting as CFO of a Colombian financial group. This diverse experience provides him with a rare command of both the legal and financial dimensions of complex transactions. He holds a JD, MBA and BSBA in Finance and Accounting from the University of Puerto Rico.



Anthony O. Maceira Zayas is the founding and managing partner of Maceira Zayas, where he serves as external general counsel to domestic and international clients. He guides business strategy and advises on regulatory affairs, tax incentives and infrastructure before Puerto Rico and federal institutions. With extensive public and private sector experience, he previously served as Executive Director of the Puerto Rico Ports Authority and as Secretary of Public Affairs. In those roles, he led the drafting and passage of landmark legislation, including the Puerto Rico Incentives Code (Act 60-2019). His client base includes Fortune 500 companies across multiple industries.



Carlos M. Fontán serves as special counsel at Maceira Zayas, advising clients on tax incentives, regulatory compliance and business establishment in Puerto Rico. Previously, he served as Director of the Office of Incentives for Businesses within the Department of Economic Development and Commerce, overseeing the implementation of the Puerto Rico Incentives Code (Act 60-2019). His background includes serving as lead attorney at the Puerto Rico Department of Justice in high-profile tax and expropriation cases and as an attorney at the Office of Industrial Tax Exemption. His experience drafting and administering Act 60 provides unmatched institutional knowledge of Puerto Rico's framework.

Maceira Zayas

351 Tetuan, 2A, San Juan PR 00901
300 New Jersey NW, 351, Washington DC 20001

Tel: 240-422-7535
Email: info@mzls.com
Web: www.mzls.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Puerto Rico's international tax framework is primarily derived from domestic (US federal and state) law, reflecting its status as a territory of the United States without independent treaty-making authority. As a result, Puerto Rico does not enter into bilateral or multilateral income tax treaties, and its cross-border tax rules are governed by local legislation and administrative practice rather than international agreements.

The principal sources of law include the Puerto Rico Internal Revenue Code of 2011, as amended (PRIRC), Treasury Regulations, and administrative guidance issued by the Puerto Rico Department of Treasury, including circular letters, administrative determinations and published instructions. These sources govern key areas such as sourcing of income, withholding obligations, reporting requirements, and compliance with incentive regimes.

Judicial decisions also play an important role in interpreting statutory provisions, particularly in areas such as trade or business nexus, source of income, and anti-abuse doctrines. In practice, cross-border tax analysis frequently requires co-ordination with US federal tax rules, including sourcing provisions under Internal Revenue Code Sections 861–865 and the application of US tax treaties at the federal level.

1.2 Hierarchy of Sources

Puerto Rico's tax system operates under a domestic hierarchy of legal authority. Statutes enacted by the Puerto Rico legislature, including the PRIRC and incentive legislation such as Act 60-2019, also known as the Puerto Rico Incentives Code ("Act 60"), constitute the primary source of law and govern the taxation of income, deductions and credits.

Treasury Regulations and administrative guidance supplement these statutes by providing interpretative rules and procedural requirements. Judicial decisions further interpret these provisions and may shape the application of key concepts such as economic nexus, source of income, and substance-over-form principles.

Although US federal tax law does not automatically apply to Puerto Rico income tax, it is frequently used as an interpretative reference, particularly in cross-border contexts. International sources, including OECD materials, are not binding but may be considered persuasive in structuring transactions and analysing global tax developments.

1.3 OECD Model/United Nations Influence on Treaty Practice

Puerto Rico does not follow the OECD Model Tax Convention or the UN Model Double Taxation Convention as a matter of treaty practice, as it lacks authority to negotiate or enter into tax treaties. Accordingly, there is no formal alignment with model treaty provisions.

However, certain domestic concepts, particularly those relating to sourcing of income and business activity, may resemble internationally accepted standards. This similarity arises primarily from the influence

of US tax principles rather than any direct adoption of OECD or UN frameworks.

1.4 Multilateral Instrument

Puerto Rico is not a signatory to the OECD Multilateral Instrument (MLI) and, as a US territory, lacks the legal capacity to become one. The United States has not signed the MLI. As a result, it does not apply to US tax treaties and, by extension, has no direct or indirect application to Puerto Rico at the time of writing.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Puerto Rico operates a hybrid tax system combining elements of residence-based and source-based taxation. Bona fide resident individuals are generally subject to Puerto Rico income tax on their worldwide income under the PRIRC, subject to available exemptions and credits.

Non-resident individuals and foreign entities are taxed only on Puerto Rico-source income or income effectively connected with a Puerto Rico trade or business. The determination of source is therefore central to the Puerto Rico tax system.

In practice, the interaction between Puerto Rico taxation and US federal taxation creates a unique framework. Under Internal Revenue Code Section 933, bona fide residents of Puerto Rico may exclude Puerto Rico-source income from US federal taxation, subject to applicable requirements.

2.2 Tax Residence of Individuals

Physical presence in Puerto Rico during the taxable year of at least 183 days raises the presumption of local residence. Other criteria used are similar to those used by the IRS, including but not limited to data on driver's licences, vehicle registrations, etc. Physical presence is also a criterion for individuals to benefit from certain tax incentives.

2.3 Taxation of Resident Individuals

Bona fide resident individuals are generally subject to Puerto Rico income tax on their worldwide income under the PRIRC. This includes employment income, business income and passive income, subject to applicable deductions, credits and exemptions.

Puerto Rico provides mechanisms to mitigate double taxation, including foreign tax credits for taxes paid to other jurisdictions. In addition, incentive regimes under Act 60 may provide preferential treatment for certain types of income, including interest, dividends and capital gains, subject to decree conditions.

In practice, tax planning for resident individuals focuses on accurate sourcing, proper characterisation of income, and compliance with both Puerto Rico and US federal rules.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals are taxed only on their Puerto Rico-source income. This includes compensation for services performed in Puerto Rico, rental income from Puerto Rico property, royalties, and certain fixed or determinable income items.

Such income is generally subject to withholding at source, which serves as the primary collection mechanism. Applicable withholding rates depend on the nature of the income and the status of the recipient.

Non-residents may also be required to file Puerto Rico income tax returns if they are engaged in a trade or business in Puerto Rico or seek to claim deductions, credits or refunds.

2.5 Tax Residence of Legal Entities

The tax residence of legal entities is determined primarily by place of organisation. Entities organised under the laws of Puerto Rico are treated as domestic entities and are generally subject to Puerto Rico taxation on their worldwide income.

Foreign entities may be subject to Puerto Rico taxation if they are engaged in a trade or business in Puerto Rico or derive Puerto Rico-source income. The analysis typically focuses on economic nexus, the nature of activities conducted in Puerto Rico, and the sourcing of income.

2.6 Definition of Permanent Establishment

Puerto Rico does not adopt a formal concept of "permanent establishment" as used in tax treaties. Instead, it relies on domestic concepts of engagement in a trade or business within Puerto Rico.

This determination is based on the nature, continuity and extent of activities conducted within the jurisdiction. Unlike treaty-based permanent establishment definitions, there is no fixed threshold or standardised definition, and the analysis is fact-specific.

For multinational groups, US federal tax treaty concepts may be relevant at the US level but generally do not limit Puerto Rico's taxing jurisdiction under local law.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Income derived from immovable property located in Puerto Rico is considered Puerto Rico-source income and taxable in Puerto Rico regardless of the owner's residence. This includes rental income and gains attributable to Puerto Rico real property, subject to Puerto Rico's rules on deductions, depreciation and gain characterisation.

3.2 Business Profits

Business profits are taxable in Puerto Rico if they are derived from Puerto Rico sources or connected to a trade or business conducted within Puerto Rico.

Domestic entities are generally subject to taxation on their worldwide income, while foreign entities are taxed only on Puerto Rico-source income or income effectively connected with Puerto Rico activities.

Preferential regimes under Act 60 may significantly reduce the effective tax rate for qualifying activities, including export services and manufacturing, provided that statutory requirements and substance conditions are satisfied.

3.3 Passive Income

Passive income, including dividends, interest and royalties, is taxed based on source and the status of the recipient. Payments to non-residents are generally subject to withholding tax under Puerto Rico law.

Dividends paid by Puerto Rico corporations and interest or royalty payments sourced to Puerto Rico may be subject to withholding, with rates depending on statutory provisions and the nature of the payment.

Because Puerto Rico does not have its own treaty network, reductions in withholding tax generally are not a Puerto Rico income tax mechanism. Tax planning therefore tends to focus on domestic exemptions, structuring strategies or incentive regimes.

3.4 Capital Gains

Capital gains are taxed based on both source and residence. Gains derived from the sale of Puerto Rico property or assets connected to Puerto Rico activities are generally treated as Puerto Rico-source income.

Bona fide resident individuals may benefit from preferential tax treatment under incentive regimes such as Act 60, which may provide reduced or exempt taxation on certain gains realised after establishing residence.

The sourcing of gains and timing of realisation are critical factors in determining the applicable tax treatment.

3.5 Employment Income

Employment income is generally sourced to the location where the services are performed. Compensation for services performed in Puerto Rico is treated as Puerto Rico-source income and is subject to Puerto Rico taxation.

Cross-border employment arrangements require careful allocation of income based on the location of services. Remote work arrangements have introduced additional complexity, particularly in determining whether the presence of employees in Puerto Rico creates a nexus for foreign employers.

Puerto Rico has adopted measures to facilitate remote work in certain contexts, allowing remote workers to not create a nexus for foreign employers as long as

the employer is not otherwise engaged in a trade or business in Puerto Rico.

Specifically, Act 27-2024 (the Remote Work Act), enacted on 17 January 2024, establishes a dedicated statutory framework governing remote work arrangements for employers with no business presence or taxable sales activity in Puerto Rico. For Puerto Rico-domiciled employees who are classified as exempt under the Fair Labor Standards Act (FLSA) – executives, administrators and professionals – and who work remotely for a covered employer, the employment relationship is governed exclusively by the parties' contract and is exempt from Puerto Rico's protective labour legislation, provided that the employer maintains insurance coverage at least equivalent to that required by Puerto Rico law. The nexus protection is codified in Act 52-2022, which amended the Puerto Rico Internal Revenue Code to provide that allowing employees to work remotely from Puerto Rico does not constitute an "economic nexus" with Puerto Rico, even where the employee's home office is a condition of employment, the employer reimburses home office expenses, or the employee performs certain duties from an employer-designated location. Together, Act 27-2024 and Act 52-2022 remove the two principal deterrents – employment law exposure and tax nexus risk – that had led many mainland and international companies to prohibit employees from relocating to Puerto Rico.

For non-domiciled employees who voluntarily relocate to Puerto Rico on a temporary basis to work remotely for a covered employer, the exemption from Puerto Rico employment law is broader: it applies to both exempt and non-exempt employees, and the employment relationship is governed by the contract or the law of the employee's domicile jurisdiction. This exemption ends if the non-domiciled employee decides to become domiciled in Puerto Rico – at which point the FLSA exempt-employee requirement applies, and a non-exempt employee who acquires Puerto Rico domicile loses the protection of Act 27-2024 entirely and becomes subject to Puerto Rico labour law.

The Department of Labor and Human Resources confirmed this framework in Opinion of the Secretary No. 2024-02, issued 10 September 2024, which also clarifies that tax treatment for all covered employees continues to be governed by the Puerto Rico Internal Revenue Code regardless of the labour law exemptions Act 27-2024 provides.

3.6 Other Income

Puerto Rico applies special rules to certain categories of income, particularly:

- Intellectual property income
- Licensing arrangements
- Manufacturing income under incentive regimes

These rules are often governed by Act 60, which provides targeted incentives rather than relying on treaty-based relief.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Puerto Rico does not independently implement OECD initiatives, including Pillars One and Two. Any impact arises indirectly through US federal adoption or multinational group transfer pricing governance, rather than through incorporation of the OECD framework.

4.2 Pillar One – Amount A

Puerto Rico does not have an independent position on Amount A, as it lacks sovereignty in international tax negotiations. Puerto Rico taxpayers may still be indirectly affected by Amount A outcomes through multinational group compliance, US federal rules and global changes to allocation of taxing rights.

4.3 Pillar Two

Puerto Rico has not implemented the global minimum tax. A multinational group with Puerto Rico operations may nonetheless face Pillar Two exposure in other jurisdictions, potentially affecting the group's effective tax rate calculations and placing practical pressure on Puerto Rico incentive modelling, intercompany pricing and documentation.

4.4 Specific Features or Deviations of Pillar Two

The global minimum tax framework has not been implemented in Puerto Rico. However, during 2024,

then governor Pedro Pierluisi proposed legislation in anticipation of its impact on the island. Regarding implementation, in this case Puerto Rico's deviation from the framework is structural due to its inability to implement. It is not a sovereign jurisdiction and therefore does not implement OECD reforms independently.

4.5 Digital Services Tax

Puerto Rico has not implemented a digital services tax. Digital and technology-related income is taxed under general sourcing and business income rules. However, many digital and technology-related operations are eligible for tax incentives under Act 60.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Puerto Rico distinguishes between unlawful tax evasion or fraud and legitimate tax planning. Indicators of abusive arrangements include lack of economic substance, non-arm's-length pricing, circular transactions, and inconsistencies between reported income and financial records.

5.2 Anti-Avoidance Mechanisms

Anti-avoidance enforcement relies on substance-over-form principles, withholding regimes, related-party scrutiny, and enforcement of incentive compliance requirements under Act 60.

5.3 Blacklists and Non-Cooperative Jurisdictions

Puerto Rico does not maintain a formal blacklist of non-cooperative jurisdictions comparable to those used by the European Union. However, transactions involving low-tax or opaque jurisdictions may be subject to heightened scrutiny, particularly where they raise concerns regarding substance, transfer pricing or withholding compliance.

5.4 Reporting Obligations and Disclosure Regimes

Compliance is supported through withholding returns, information reporting, payroll filings, and decree-based reporting requirements for incentive recipients.

Decree-based compliance reporting for Act 60 grantees often requires annual compliance submissions, agreed-upon procedures, and documentation of eligible activity, headcount and local expenditure.

5.5 Role of Tax Authorities and Enforcement Measures

The Puerto Rico Department of Treasury has broad authority to conduct audits, request information, assess deficiencies and impose penalties. Cases involving fraud may be referred to other governmental authorities.

6. Penalties and Sanctions

6.1 Tax Penalties

Penalties include:

- Interest (PRIRC §6040.01)
- Surcharges
- Penalties

These are enforced by the Puerto Rico Department of Treasury.

6.2 Criminal Penalties

Criminal sanctions may apply to wilful evasion, fraud, falsification of returns or records, and intentional failure to remit withheld taxes. Exposure can include monetary fines and imprisonment, often alongside civil assessments, interest and administrative penalties.

6.3 Interaction Between Tax and Criminal Procedures

Puerto Rico tax matters that present fraud indicators may be referred to the Puerto Rico Department of Justice for criminal investigation and prosecution. Co-ordination typically occurs through information sharing and parallel processes, where the tax authority continues civil assessment work while prosecu-

tors evaluate criminal elements such as wilfulness and intent.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Puerto Rico does not independently participate in OECD or treaty-based administrative co-operation frameworks. In practice, international exchange of information relevance is largely mediated through US federal mechanisms and compliance regimes (such as FATCA), while Puerto Rico focuses on domestic enforcement and reporting.

7.2 Exchange of Information Clauses in Tax Agreements

Puerto Rico does not maintain its own treaty exchange-of-information network. Information exchange affecting Puerto Rico taxpayers may occur indirectly through US federal exchange mechanisms, and through domestic information reporting and withholding documentation collected by the Puerto Rico Department of Treasury.

7.3 Other Forms of International Tax Collaboration

Puerto Rico does not independently participate in programmes such as the OECD International Compliance Assurance Programme, joint audits or treaty-based co-ordinated compliance programmes. Multinational taxpayers may still experience "practical co-ordination" pressures because global group audits and documentation (transfer pricing files, global minimum tax calculations) can drive the information Puerto Rico Department of Treasury requests during local examinations.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Puerto Rico does not independently administer a mutual agreement procedure (MAP) programme. Taxpayers generally must rely on US competent authority procedures where a US treaty is relevant to the taxpayer's US federal position, recognising that Puerto Rico income tax is governed by local law.

8.2 Application Deadlines

Puerto Rico does not have a local MAP application deadline because it does not administer a MAP programme. Where a US treaty MAP is pursued for US federal purposes, the applicable treaty typically governs the MAP request timing.

8.3 Mandatory Binding Arbitration

Puerto Rico does not provide mandatory binding arbitration as a local tax procedure.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Puerto Rico does not have an advance pricing agreement programme comparable to those of major treaty jurisdictions.

9.2 Other Mechanisms

Puerto Rico taxpayers commonly pursue tax certainty through:

- incentive decrees under Act 60, which can lock in tax rates and agreed treatment for qualifying income streams, subject to compliance and substance;
- administrative consultations or rulings where available under Puerto Rico Department of Treasury practice; and
- robust transfer pricing documentation and intercompany agreements designed to withstand Puerto Rico audit scrutiny, especially for royalty, service and financing structures.

Trends and Developments

Contributed by:
Anthony O. Maceira Zayas, Simón Carlo Valentín and Carlos M. Fontán
Maceira Zayas

Maceira Zayas advises domestic and international clients on tax planning, compliance, corporate, regulatory and government affairs matters from its principal office in San Juan. The tax practice focuses on structuring and compliance across Puerto Rico and US federal tax regimes, including matters before the Puerto Rico Department of Treasury (Hacienda) and the Internal Revenue Service. The team counts three dedicated tax attorneys, with two additional corporate practitioners who regularly collaborate on tax-related mandates. The firm advises individuals and businesses on Puerto Rico's Act 60-2019 incentive framework, with depth in decree applications, annual compliance, incentive stacking, and the interaction between Puerto Rico and federal tax obligations. Recent engagements include advising the Senate of Puerto Rico on the Governor's proposed tax reform package, structuring a capital gains position generating approximately USD1.8 million in annual tax savings, and advising a business conglomerate on combining multiple Act 60 incentive categories.

Authors



Anthony O. Maceira Zayas is the founding and managing partner of Maceira Zayas, where he serves as external general counsel to domestic and international clients. He guides business strategy and advises on regulatory affairs, tax incentives and infrastructure before Puerto Rico and federal institutions. With extensive public and private sector experience, he previously served as Executive Director of the Puerto Rico Ports Authority and as Secretary of Public Affairs. In those roles, he led the drafting and passage of landmark legislation, including the Puerto Rico Incentives Code (Act 60-2019). His client base includes Fortune 500 companies across multiple industries.



Simón Carlo Valentín leads the tax practice at Maceira Zayas. A licensed attorney, CPA and notary public, he offers a multidisciplinary approach to advising investors and non-profits on corporate structuring, tax incentives and compliance. His extensive background includes roles at PricewaterhouseCoopers and BDO, serving as Vice President for a major federal contractor, and acting as CFO of a Colombian financial group. This diverse experience provides him with a rare command of both the legal and financial dimensions of complex transactions. He holds a JD, MBA and BSBA in Finance and Accounting from the University of Puerto Rico.



Carlos M. Fontán serves as special counsel at Maceira Zayas, advising clients on tax incentives, regulatory compliance and business establishment in Puerto Rico. Previously, he served as Director of the Office of Incentives for Businesses within the Department of Economic Development and Commerce, overseeing the implementation of the Puerto Rico Incentives Code (Act 60-2019). His background includes serving as lead attorney at the Puerto Rico Department of Justice in high-profile tax and expropriation cases and as an attorney at the Office of Industrial Tax Exemption. His experience drafting and administering Act 60 provides unmatched institutional knowledge of Puerto Rico's framework.

Maceira Zayas

351 Tetuan, 2A, San Juan PR 00901
300 New Jersey NW, 351, Washington DC 20001

Tel: 240-422-7535
Email: info@mzls.com
Web: w.mzls.com



Contributed by: Anthony O. Maceira Zayas, Simón Carlo Valentín and Carlos M. Fontán, **Maceira Zayas**

Act 38-2026, just signed into law, extends Puerto Rico's Resident Individual Resident Investor programme, one of the two flagship incentives under Act 60-2019 (Act 60, also known as the Puerto Rico Incentives Code), from 2035 to 2055, while restructuring its terms for new applicants. Since the programme's original creation under Act 22-2012 and its consolidation into Act 60, qualifying individuals who established bona fide residency in Puerto Rico could be subject to a 0% Puerto Rico income tax rate on interest, dividends and capital gains derived from securities and other assets, accrued and realised after their date of move. Act 38-2026 preserves that zero-rate structure for individuals who submit their decree applications on or before 31 December 2026, and replaces it with a 4% fixed preferential rate for everyone who applies on or after 1 January 2027. The 20-year extension removes the expiration risk that had introduced uncertainty for long-term planners, while simultaneously raising the price of entry for those who wait to submit their application.

For the pre-2027 cohort, interest and dividend income earned after becoming a bona fide Puerto Rico resident remains fully exempt from Puerto Rico income tax on amounts recognised before 1 January 2036. Capital gains accrued after relocation, on assets held at the time of arrival and those acquired after arrival, are likewise fully exempt if recognised before 1 January 2036.

For the post-2026 cohort, those same income streams are subject to the 4% preferential rate with benefits running through 31 December 2055. A savings clause in Section 2022.01 (b)(2) preserves the right of any decree holder to apply a more favourable rate if one is available under other provisions of Puerto Rico or federal law.

Both cohorts face the same treatment for any gain accrued before becoming a bona fide Puerto Rico resident. Any gains accrued before relocating to Puerto Rico are not covered by the decree. If the asset is held for more than ten years after the investor becomes a Puerto Rico resident and is sold before the programme's applicable end date, the long-term capital gain attributable to pre-relocation appreciation is taxed at 5%; if the gain is recognised at any point before that, the ordinary rates of Puerto Rico Internal Revenue Code (IRC) apply.

The application submission date, not the date of physical relocation or decree approval, determines cohort membership under the statute. An investor who submits a complete application by 31 December 2026 qualifies for zero-rate treatment even if the decree is approved and residency is established in 2027 or later. An investor who files in 2026 but never genuinely establishes Puerto Rico residency will hold a decree without the ability to claim the income tax benefits it describes. The tax benefit requires actual bona fide residency, not paperwork alone.

Act 38-2026 also provided clarity regarding two compliance measures applicable to decree holders that have been modified several times across the years. For post-2026 applicants, a new prior non-residency requirement bars individuals who have been Puerto Rico residents within the six years before their application date, directed at cyclical relocation rather than genuine new arrivals, and the primary residence ownership requirement was limited to the decree holder individually, jointly with their spouse, or through an eligible trust.

Key distinctions between the two cohorts under Act 38-2026 include:

- Legacy 0% cohort (application filed on or before 31 December 2026):
  - (a) 0% Puerto Rico tax rate on qualifying interest, dividends and post-move capital gains
  - (b) Applies to amounts recognised before 1 January 2036
  - (c) Keeps the historically more favourable treatment
  - (d) Applicants must not have lived in Puerto Rico between 2006 and 2012
  - (e) Existing decree holders remain fully protected and may optionally seek a decree modification to adopt post-2026 terms if the extended 2055 horizon is preferable
- New 4% cohort (application filed on or after 1 January 2027):
  - (a) 4% fixed preferential Puerto Rico tax rate on the same qualifying income streams

(b) Benefits run until 31 December 2055
(c) Subject to the new six-year prior non-residency rule
(d) 4% preferential rate on post-relocation interest, dividends and capital gains recognised before 1 January 2056; 5% rate on pre-relocation appreciation recognised after ten years and before 1 January 2056; ordinary Puerto Rico rates otherwise; more favourable rate applies if otherwise available under law.
(e) The prior non-residency requirement is now a six-year look-back period from the date of application.
(f) The incentive always required the acquisition of a primary residence in Puerto Rico, but Act 38-2026 modified the requirement to limit the ownership of the primary residence to the grantee individually, jointly with their spouse, or through an eligible trust.

DDEC Tightens Compliance Enforcement Across All Decree Programmes

Puerto Rico's Department of Economic Development and Commerce (DDEC), the agency that issues and oversees Act 60 decrees through its Office of Incentives (OI), has shifted its operational focus from decree approval and issuance to active compliance enforcement, a change that makes active compliance a more immediate practical concern for decree holders than at any prior point in the programme's history. For most of the programme's existence under Acts 20 and 22 and their successor Act 60, annual compliance reporting requirements covered only five programme categories, and enforcement actions were rare; the current administration has expanded mandatory reporting to 15 categories and established a dedicated audit and revocation process. In 2025, the OI audited 1,798 decrees covering both resident individual investors and export services businesses, issuing 305 deficiency notices, 147 to individual investors and 158 to export services businesses, each carrying a fine of up to USD10,000. Four decrees were formally revoked for non-compliance with decree terms, 19 were annulled, and more than 887 holders surrendered their decrees voluntarily.

For 2026, DDEC has announced sample-based audit campaigns covering all industries under Act 60, automated deficiency notices for late annual report filings after 15 January 2026, and automatic fines beginning at USD1,000 per violation escalating to potential decree revocation. Some of the new programme categories facing added annual reporting compliance requirements include sectors such as private equity funds, tourism businesses, scientific researchers, creative industries and agro-industrial operations. DDEC has also announced active co-ordination with Puerto Rico's Department of Treasury (Hacienda) and the IRS on information sharing, and all new individual investor decree applications now require criminal background certifications from the applicant's prior country of residence; individuals with fraud or felony convictions are ineligible.

On 11 March 2026, DDEC issued Administrative Order No. 2026-002, directed specifically at private equity funds (*Fondos de Capital Privado*) operating under Act 60 decrees. The order addresses practices the agency had identified as potential abuse vectors: capital recycling through related-party loans, in-kind contributions of securities designed primarily for tax benefit rather than genuine investment, and the use of fund capital to extend loans to individual investors. The key operational rules under the order are:

- In-kind contributions of securities must remain in the fund, or an equivalent cash amount must be reinvested, for a minimum of 24 months from the date of contribution.
- Investments in entities related to an investor holding 20% or more in the fund require documented economic justification demonstrating new activity, operational expansion or job creation.
- The tax deduction base for an investor who takes a fund loan within 120 days of contributing is reduced by the loan amount.

Some practitioners have questioned whether the order was issued through the appropriate process to give it binding regulatory effect under Puerto Rico's administrative law framework, but until it is challenged and set aside by a court of competent jurisdiction, the order remains operative and DDEC continues to apply it.

The Government Accountability Office (GAO) report released on 8 December 2025, GAO-26-107225,

which examined IRS oversight of taxpayers claiming the Puerto Rico resident investor incentive, adds congressional weight to this enforcement picture. The report found that the IRS compliance campaign launched in January 2021 operated for more than four years without current, complete data on the decree-holder population and did not act on a DDEC referral identifying 179 individuals who could not demonstrate they met Puerto Rico's 183-day residency requirement. The IRS agreed with all three GAO recommendations, committing to establishing systematic data-sharing procedures with Hacienda and written protocols for processing Puerto Rico government referrals. The report's data showing that average federal taxes paid by incentive recipients fell 46% after relocation, with the aggregate reduction potentially amounting to hundreds of millions of dollars per year, provides the quantitative basis for the sustained congressional scrutiny that generated the investigation and is unlikely to diminish.

The 2025 enforcement cycle also helped identify a recurring pattern in deficiency cases where decree holders who had relied on non-attorney consultants or self-administered their compliance obligations were disproportionately represented among those who received deficiency notices, underscoring that the technical and legal complexity of sustained decree compliance warrants qualified counsel.

Federal Tax Changes Under OBBBA Affect Chapter 3 Planning

The One Big Beautiful Bill Act (OBBBA), signed 4 July 2025, made permanent or modified several federal provisions that interact directly with Act 60's Chapter 3 export services programme. Chapter 3, the Export of Services incentive and the successor to the former Act 20 framework, offers qualifying businesses a fixed 4% Puerto Rico income tax rate on export services income and a 100% Puerto Rico exemption on dividends distributed by eligible entities. Because Chapter 3 entities frequently operate within structures involving US shareholders and controlled foreign corporations (CFCs, foreign corporations in which US persons own more than 50% by vote or value), OBBBA's international tax changes carry direct structural consequences. OBBBA's permanent reinstatement of 100% bonus depreciation under IRC Section 168 (k), along with the possession carve-out, materially reduces the after-tax cost of capital investment required to establish and maintain a bona fide office and operational infrastructure in Puerto Rico. In parallel, the permanent qualified business income deduction under IRC §199A enhances the after-tax return profile for US individual investors utilising pass-through structures. However, in the context of a Puerto Rico entity treated as a CFC, these provisions do not eliminate the requirement for US shareholders to include tested income. Rather, they function to reduce the underlying earnings base subject to inclusion and improve overall capital efficiency, thereby partially mitigating, but not eliminating, the US tax friction associated with Chapter 3 structures owned, directly or indirectly, by US persons.

Notwithstanding the foregoing benefits, OBBBA introduces additional complexity into the cross-border tax analysis applicable to Puerto Rico structures. The recharacterisation of Global Intangible Low-Taxed Income (GILTI) as Net CFC Tested Income (NCTI), coupled with a permanent 40% deduction under IRC §250, results in an effective US tax rate of approximately 12.6% (before foreign tax credits), such that the 4% Puerto Rico tax rate does not, standing alone, eliminate residual US taxation for corporate US shareholders. OBBBA further modifies the Subpart F pro rata share rules to require inclusion where a US shareholder owns CFC stock at any time during the taxable year, rather than solely on the last day, expanding the scope of potential inclusions. Collectively, these changes necessitate careful ownership and structural planning to avoid unintended CFC classification and to preserve the intended tax benefits of Puerto Rico incentive regimes.

Puerto Rico's Broader Tax Reform Remains Unfinished

Senate Bill 912 and its companion House Bill 1014, introduced in January 2026, proposed amendments to Puerto Rico's IRC of 2011 that would reduce individual income tax rates to close the substantial gap with federal rates (a marginal rate of 33% applies in Puerto Rico on income above USD61,500; the proposal is to raise this threshold to USD150,000) and adjust personal exemptions for inflation. The bills proposed to offset the fiscal cost by eliminating certain sales and

use tax exemptions, including the exemption for residential solar energy systems. The reform did not move forward after the administration failed to produce fiscal impact data adequate to evaluate the proposal, and critics argued the bills adjusted brackets and removed narrow exemptions without addressing the structural deficiencies that have made Puerto Rico's tax code uncompetitive.

Any successor legislation would operate within a firm constraint. Under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), enacted by Congress in 2016, the Financial Oversight and Management Board (FOMB) exercises authority over Puerto Rico's fiscal plans and budget, and any reform that materially affects projected revenues must be demonstrably revenue-neutral under the FOMB framework. The administration framed the failed bills as meeting that standard, a position it could not substantiate with the data presented.

The failed bills signal that comprehensive tax reform requires a level of fiscal documentation that the administration has not yet produced. The administration has committed to a revised proposal, and Senate President Rivera Schatz and House Speaker Carlos Méndez have both identified tax reform as a legislative priority before 2028. What form that revision takes, and whether it touches upon the Act 60 incentive structure, will depend on the administration's ability to satisfy the FOMB's revenue neutrality requirements with credible fiscal impact data.

SINGAPORE



Law and Practice

Contributed by:
Lee Woon Shiu and Cheung Kuan Swan (Catherine)
DBS Private Bank

Contents

1. Sources and Principles p.387
1.1 Domestic Sources of International Tax Law p.387
1.2 Hierarchy of Sources p.387
1.3 OECD Model/United Nations Influence on Treaty Practice p.387
1.4 Multilateral Instrument p.388

2. Territoriality, Residence and Permanent Establishment p.388
2.1 General Principle of Territorial Taxation p.388
2.2 Tax Residence of Individuals p.388
2.3 Taxation of Resident Individuals p.389
2.4 Taxation of Non-Resident Individuals p.389
2.5 Tax Residence of Legal Entities p.389
2.6 Definition of Permanent Establishment p.389

3. Taxation of Cross-Border Income p.390
3.1 Income From Immovable Property p.390
3.2 Business Profits p.390
3.3 Passive Income p.390
3.4 Capital Gains p.391
3.5 Employment Income p.391
3.6 Other Income p.392

4. OECD/G20 Global Tax Reform p.392
4.1 Pillar One – Amount B p.392
4.2 Pillar One – Amount A p.393
4.3 Pillar Two p.393
4.4 Specific Features or Deviations of Pillar Two p.393
4.5 Digital Services Tax p.393

5. Anti-Avoidance and Anti-Evasion Measures p.394
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.394
5.2 Anti-Avoidance Mechanisms p.394
5.3 Blacklists and Non-Cooperative Jurisdictions p.395
5.4 Reporting Obligations and Disclosure Regimes p.395
5.5 Role of Tax Authorities and Enforcement Measures p.396

6. Penalties and Sanctions p.397
6.1 Tax Penalties p.397
6.2 Criminal Penalties p.397
6.3 Interaction Between Tax and Criminal Procedures p.397

7. Administrative Co-Operation p.398
7.1 Legal Framework for Administrative Co-Operation p.398
7.2 Exchange of Information Clauses in Tax Agreements p.398
7.3 Other Forms of International Tax Collaboration p.398

8. Mutual Agreement Procedures and Arbitration p.399
8.1 Availability and Legal Basis p.399
8.2 Application Deadlines p.399
8.3 Mandatory Binding Arbitration p.399

9. Dispute Prevention p.400
9.1 Advance Pricing Agreements p.400
9.2 Other Mechanisms p.400

DBS Private Bank is the third-largest private bank in Asia, and has a presence in 19 markets globally. As a leading family office practice in Singapore, the firm offers a comprehensive suite of bespoke wealth management solutions, which includes investment advisory, portfolio management, trust, liquidity and estate planning, and family office solutions. In 2023, the firm launched the DBS Multi Family Office Foundry Variable Capital Company, the first bank-backed multi-family office leveraging Singapore's VCC structure, as an attractive alternative for affluent families to manage their wealth without having to establish their own Single-Family Office. DBS also leverages the strengths of the broader DBS Group to service the full spectrum of its clients' wealth management and business needs.

Authors



Lee Woon Shiu is DBS Group's head of wealth planning, family office and insurance solutions, and has more than 25 years of experience in advisory, client development and professional training in family office, trusts, high-net-worth life insurance and estate planning in Asia-Pacific. Woon Shiu attended Yale University and the National University of Singapore where he was a Law Society of Singapore Book Prize Winner. A dual-qualified lawyer of the UK and Singapore, with a STEP certification, Woon Shiu is also adjunct associate professor at the Nanyang Technological University where he regularly lectures on wealth structuring and estate succession. He is also a board member of the DBS Foundation.



Cheung Kuan Swan (Catherine) is DBS Group's head of the wealth planning solutions hub, and provides advice, training and transactional support on a wide spectrum of legal, regulatory and tax issues for bespoke structuring, product guides and trustee manuals. Prior to crossing into wealth management, Catherine was a practising lawyer for six years in Singapore and Hong Kong. She has over 20 years of experience with key roles in trust, wealth planning advisory, legal, compliance and fiduciary functions. A triple-qualified lawyer of Singapore, Hong Kong and the UK, Catherine is also a Barrister (Middle Temple Inns of Courts), a qualified Trust & Estate Practitioner and holds an LLM in Commercial & Corporate Law.

DBS Private Bank

12 Marina Boulevard
Level 6
DBS Asia Central
Marina Bay Financial Centre Tower 3
Singapore
018982

Tel: +65 9021 5130
Email: catherineks@dbs.com
Web: www.dbs.com.sg



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The primary sources of international tax law in Singapore comprise domestic legislation, subsidiary legislation, international tax treaties (Double Taxation Agreements or DTAs), tax administrative guidance and court decisions.

Domestic Legislation

The Income Tax Act 1947 (ITA) is the fundamental domestic legislation governing income taxation in Singapore. It establishes the territorial basis of taxation and key international provisions relevant to cross-border transactions, including rules on residence, withholding taxes and anti-avoidance.

The Economic Expansion Incentives (Relief from Income Tax) Act 1967 provides for targeted tax incentives designed to promote specific economic activities and attract foreign investment.

Subsidiary Legislation

Subsidiary legislation forms an integral part of Singapore's international tax framework. Various rules, orders and regulations issued under the ITA give operational effect to statutory provisions and international agreements. In particular, DTAs are implemented through specific orders made under the ITA, such as the Double Taxation Relief (Income Tax) Orders, which incorporate treaty provisions into domestic law.

Subsidiary legislation also governs administrative and compliance aspects of the tax system, including withholding tax procedures, reporting obligations and information exchange frameworks.

Tax Administrative Guidance

Tax administrative guidance is provided by the Inland Revenue Authority of Singapore (IRAS) through e-Tax Guides, circulars and practice notes. The IRAS also issues advance rulings that interpret tax laws and provide application guidance. While such guidance is not legally binding, it is highly influential and provides important insight into IRAS' administrative position.

Case Law

Judicial precedent forms an important source of tax law in Singapore. Decisions of the Singapore courts, including the Court of Appeal, provide authoritative interpretations of the ITA and related principles. Decisions on tax matters made by these courts are essential for clarifying the application of relevant tax legislation and in areas such as the determination of source and residence.

DTAs

Singapore maintains an extensive treaty network comprising over 100 comprehensive DTAs, limited DTAs (eg, for shipping/air transport), and Exchange of Information (EOI) arrangements with around 100 jurisdictions, positioning it among the most extensive treaty networks in Asia. These agreements serve to eliminate double taxation and prevent fiscal evasion, provide for the exchange of information, and facilitate cross-border trades and investments. The treaties generally follow the OECD Model Tax Convention, with some modifications to suit Singapore's economic and policy objectives. The network covers Singapore's major trading partners as well as a broad range of emerging economies globally.

1.2 Hierarchy of Sources

In Singapore, domestic tax legislation – primarily the ITA – generally takes precedence unless a ratified DTA, incorporated through subsidiary legislation, overrides it in the event of any inconsistency. This framework ensures compliance with Singapore's international treaty obligations. The IRAS provides administrative guidance concerning the interpretation and practical application of tax laws and DTAs. However, such guidance does not carry legal authority. Judicial decisions of the Singapore courts set authoritative precedents through the interpretation of domestic tax legislation and DTAs.

1.3 OECD Model/United Nations Influence on Treaty Practice

Singapore generally adopts the OECD Model Tax Convention as the basis for its treaty negotiations, particularly regarding the allocation of taxing rights and definitions of key terms like "permanent establishment" and "resident". Any deviations are typically tailored to reflect its territorial tax system, and are

driven by Singapore's economic policies or negotiation strategies.

While Singapore does not primarily follow the United Nations Model Double Taxation Convention (UN Model), it incorporates aspects of the UN Model in its treaties with developing countries to suit its bilateral relationships (eg, to allow a greater share of taxing rights to the source country).

Significant variations frequently occur in specific articles, such as those pertaining to withholding taxes on dividends, interests, and royalties. As Singapore often negotiates reduced withholding tax rates or alternative allocation rules to facilitate cross-border trade and investment, the provisions addressing the taxation of technical fees or certain independent personal services may differ from the OECD Model.

1.4 Multilateral Instrument

Singapore is a signatory to the Multilateral Instrument (MLI) which has been fully ratified.

Singapore signed the MLI on 7 June 2017, ratified it on 22 December 2018, and implemented it from 1 April 2019. Singapore has adopted key provisions of the MLI, including the principal purpose test (PPT), preamble language, and mutual agreement procedure, while reserving its position on certain optional provisions.

Instead of having to renegotiate every bilateral tax treaty one by one, the MLI serves to modify how domestic law interacts with multiple international treaties designed to prevent tax abuse, including Base Erosion and Profit Shifting (BEPS). The extent of modification of the existing bilateral treaties and its effects vary depending on whether Singapore treaty partners have also ratified the MLI and the specific provisions that both jurisdictions have elected to adopt.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Singapore operates a territorial basis of taxation. This means that only income that accrues in, or is derived from, Singapore is generally subject to Singapore income tax. Foreign-sourced income is typically taxed only when it is received in, or deemed received in, Singapore.

Foreign-sourced income received in Singapore by tax resident companies and limited partnerships is generally subject to tax, unless a specific exemption applies. Under the foreign-sourced income exemption (FSIE) regime, certain categories of foreign-sourced income, namely foreign-sourced dividends, foreign branch profits and foreign-sourced service income, may be exempt from tax when received in Singapore by a Singapore tax resident company, provided the prescribed conditions are met.

To qualify for this exemption, the key conditions are as follows.

- The foreign income must have been subject to tax in the foreign jurisdiction from which it was received. This means the foreign jurisdiction had the right to tax the income, even if the tax actually paid was different from the headline tax rate.
- The highest corporate tax rate (headline tax rate) in that foreign jurisdiction must be at least 15% at the time the foreign income is received in Singapore. This condition is intended to prevent the exemption of income from low-tax or zero-tax jurisdictions.
- The Comptroller of Income Tax must be satisfied that granting the tax exemption would be beneficial to the Singapore tax resident company.

For foreign-sourced service income to qualify for exemption, the services must generally be provided through a fixed place of operation in the foreign country. If this is not the case, the income may be treated as Singapore-sourced and subject to Singapore tax.

2.2 Tax Residence of Individuals

An individual is considered a tax resident in Singapore for a particular Year of Assessment based on the following criteria.

- Singapore Citizen or Singapore Permanent Resident (SPR) – the individual is a Singapore Citizen or Permanent Resident who normally resides in Singapore except for temporary absences.

- Physical Presence/Employment – the individual is physically present in Singapore or exercises employment in Singapore for 183 days or more in the preceding calendar year.
- Continuous Stay – the individual resides in Singapore for a continuous period spanning two calendar years, with their total stay amounting to at least 183 days.
- Three Consecutive Years – the individual is present in Singapore for three consecutive years.

2.3 Taxation of Resident Individuals

In Singapore, tax resident individuals are subject to income tax on income accruing in or derived from Singapore.

Singapore does not tax the worldwide income of tax resident individuals. Foreign-sourced income received in Singapore by tax resident individuals is generally exempt from tax, with the exception of those received through partnerships in Singapore.

Relief mechanisms available to tax resident individuals include deductions on expenses, donations and personal reliefs.

The income of tax residents is subject to income tax at progressive rates ranging from 0% to 24%.

2.4 Taxation of Non-Resident Individuals

A non-resident individual for Singapore tax purposes is an individual who does not qualify as a tax resident of Singapore.

Non-resident individuals are typically taxed on all income sourced within Singapore. This includes employment income, trade or business income, rental income from Singapore immovable property, and other specific passive income (eg, interest, royalties) derived from Singapore.

Employment income derived by non-resident individuals is typically taxed at a flat rate of 15% or at the resident progressive tax rates, whichever results in a higher tax liability, with no personal reliefs.

Other Singapore-sourced income such as director's fees, rentals, and royalties, are generally taxed at a flat rate of 24% (from Year of Assessment (YA) 2024). Short-term employment (≤60 days) is usually exempt from employment income, subject to certain exceptions. However, withholding tax applies to certain payments.

Certain types of income, such as interest and royalties, may be subject to withholding tax at a reduced rate or exempted under an applicable DTA. This means tax rates for non-residents may differ from those for residents.

2.5 Tax Residence of Legal Entities

A legal entity (typically a company) is considered as a tax resident in Singapore if its control and management are exercised in Singapore. This determination is based on a factual assessment, primarily focusing on where the company's strategic decisions are made. The key criteria for determining a company's tax residence are as follows.

- Control and management – this is a factual assessment, usually determined by the place where the business' strategic decisions are made, which is typically where the board of directors holds its meetings.
- The place of incorporation alone is not determinative of tax residence.
- A company incorporated in Singapore may be considered as non-tax resident if its control and management are exercised outside Singapore. Conversely, a company incorporated outside Singapore may be regarded as tax resident if its control and management are exercised within Singapore.

2.6 Definition of Permanent Establishment

Singapore's domestic definition of permanent establishment (PE) outlined in Section 2 of the ITA, includes a fixed place of business through which an enterprise conducts all or part of its operations.

A PE includes a place of management, branch, office, factory, warehouse, workshop, farm or plantation; mine, oil or gas well, quarry, or a site for extracting natural resources; or a building, work site, construction, installation, or assembly project. The term also extends to agents who act on behalf of a person and

habitually exercise authority to conclude contracts in Singapore.

While the domestic definition is intentionally broad, definitions found in Singapore's tax treaties are generally consistent with those in the OECD Model Tax Convention (OECD Model). Any deviations from the OECD Model in Singapore's treaties are usually treaty-specific and may involve changes to the duration threshold for construction projects or the scope of activities considered preparatory or auxiliary.

Furthermore, the MLI has influenced the PE definition in certain treaties by introducing anti-fragmentation rules and updating the agency PE provisions to address Base Erosion and Profit Shifting (BEPS) concerns.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

In Singapore, both residents and non-residents are subject to income tax on earnings derived from immovable property, such as rental income. Residents are required to declare this income as part of their total assessable income, which is taxed at progressive resident rates. For non-residents, rental income is typically taxed at the prevailing non-resident tax rates.

Expenses directly attributable to the generation of rental income are generally deductible for both residents and non-residents.

Capital gains from the sale of immovable property are generally not taxed in Singapore unless the sale constitutes a trading activity.

3.2 Business Profits

Business profits are generally taxed on an accrual basis. In line with Singapore's territorial tax system, Companies are subject to taxation on profits arising in or derived from Singapore, as well as on profits received or deemed received in Singapore from foreign sources. Deductions are permitted for expenses that are wholly and exclusively incurred in the production of income.

Business profits generated or accrued within Singapore are subject to corporate income tax for companies, while individuals carrying on a trade or business (including sole proprietors and partners) are taxed at individual income tax rates.

Resident companies are taxed at a flat rate of 17% on their chargeable income. A range of tax incentives is available to reduce the effective tax rate, including tax exemptions for newly incorporated companies and partial tax exemptions. Non-resident companies are also taxed at 17% on profits sourced in Singapore, typically through a permanent establishment. Expenses that are wholly and exclusively incurred in generating the income are deductible.

3.3 Passive Income

The taxation of passive income in Singapore depends on the nature of the income and where it is sourced.

Dividends

Under Singapore's single-tier corporate tax system, dividends paid by resident companies are generally exempt from tax at shareholder level. Foreign-sourced dividends received by a resident company may also qualify for exemption, subject to specific criteria. Singapore does not impose withholding tax on dividends paid to residents or non-residents.

Interest

Interest income arising in Singapore is ordinarily taxable. For non-resident recipients, withholding tax applies at 15%, although this rate may be reduced or eliminated under an applicable DTA.

Royalties

Royalties originating from, or accrued in, Singapore are typically taxable. Withholding tax is levied at 10% on royalties paid to non-residents. However, this rate may be reduced or waived under a relevant DTA.

Withholding Tax (General)

Under Singapore law, payments to non-residents for certain types of services and income (including interest, royalties and management fees) are subject to withholding tax. The applicable rates vary depending on the nature of the income and may be reduced where a DTA exists between Singapore and the recipi-

ent's country of residence, provided the conditions for relief are met.

3.4 Capital Gains

Singapore generally does not impose capital gains tax. As a result, gains from the disposal of capital assets, such as shares, property, or other investments, are typically exempt from income tax.

However, if these gains are considered revenue in nature, they will be subject to income tax. This typically arises where there is frequent trading or where transactions are undertaken with a clear intention to resell at a profit. Whether gains are capital or revenue is a question of fact and depends on the specific facts and circumstances of each case, often guided by judicial concepts known as the "badges of trade".

In making this determination, the Inland Revenue Authority of Singapore (IRAS) considers several factors, including how long the asset was held, the frequency of similar transactions, and the taxpayer's intention at the time the asset was acquired and disposed of.

Section 10L of the Singapore Income Tax Act, which took effect from 1 January 2024, introduces a framework under which tax may be imposed on certain gains derived from the sale or disposal of foreign assets occurring on or after 1 January 2024, where those gains are received in Singapore by businesses that lack adequate economic substance in Singapore.

This provision forms part of Singapore's response to international tax developments. It brings specified foreign-sourced disposal gains within the scope of Singapore income tax, even though Singapore does not generally tax capital gains.

Accordingly, Section 10L may limit the availability of existing exemption regimes, including the safe harbour under Section 13W for gains from the disposal of equity investments, where the relevant conditions in Section 10L are not met.

3.5 Employment Income

Employment income derived from work carried out in Singapore is subject to tax. This includes salaries, wages, bonuses, and benefits in kind.

Resident individuals are taxed on employment income from services performed in Singapore. Foreign-sourced employment income is generally not taxable, unless it relates to services performed in Singapore.

Non-resident individuals are taxed on employment income arising in Singapore. The applicable rate is generally a flat 15%, or the progressive resident tax rates, whichever results in a higher tax liability. No personal reliefs are granted.

Short-term assignments and cross-border employments are governed by specific regulations.

- Short-term employment exemption – non-resident individuals on short-term employment in Singapore for 60 days or less in a calendar year may be exempt from income tax, provided certain conditions (and exceptions) are met (the "60-Day Rule Exemption"). The 60-day period includes weekends and public holidays that fall within the work period. To qualify, the individual must not earn income as a director, public entertainer, or professional exercising a vocation. The employment must be with a foreign employer that is not resident in Singapore, and the income must not be borne by a permanent establishment or a fixed base that the employer has in Singapore.
- Remote working arrangements may have tax implications depending on where the duties are performed, and on the tax residency status of the individual and the entity.
- Individuals – income earned by individuals working remotely in Singapore for a foreign employer may be treated as Singapore-sourced and subject to Singapore income tax, depending on factors such as the duration of stay and the nature of the work performed.
- Corporations – employing staff who work remotely from Singapore may create permanent establishment (PE) risk. This could expose the foreign company to corporate income tax in Singapore on profits attributable to that PE. The IRAS has issued

guidance noting that PE status depends on the facts and circumstances, including whether the employee has authority to conclude contracts or routinely performs critical functions for the business. Even where the foreign company has no traditional physical office in Singapore, these employees' activities could create a taxable presence in Singapore for the foreign employer.

3.6 Other Income

Singapore generally follows the principles of the OECD Model, although some types of income may be subject to specific domestic tax treatment or other nuances.

- Gains from the Sale of Real Estate Property – these are generally treated as capital gains (and therefore not taxed). However, if IRAS deems the transaction to be an "adventure in the nature of trade", the gains will be taxed as ordinary income.
- Remittances of Foreign-Sourced Income – as Singapore operates a territorial tax system (with an exception for foreign-sourced income received in Singapore), the timing and manner of remittance can be crucial. Certain foreign-sourced income received in Singapore may be exempt if specific conditions are met (for example, where the income is received by a Singapore tax-resident company from a jurisdiction with a headline corporate tax rate of at least 15%, and the income was subject to tax there).
- Pensions – in Singapore, pensions are generally treated as taxable income, although exemptions apply to specific types, such as government pensions and certain approved funds.
- Trusts – income distributed from a trust in Singapore can be subject to specific tax treatment, depending on the nature of the trust and the tax residency of its beneficiaries. Generally, a trust's income is taxed at the trustee level, unless specific exemptions apply or the trust is granted tax transparency.
- Taxation at Trustee Level – under Singapore tax law, the income of a trust is typically treated as the statutory income of the trustee and is chargeable to tax on the trustee, usually at a flat rate of 17%.
- Tax Transparency – the Comptroller of Income Tax may grant a trust "tax transparency" treatment. In such cases, where beneficiaries are Singapore residents and are entitled to the trust income, they may be taxed on their share of the income at their personal income tax rates, unless specific exemptions and concessions apply to the income they receive.
- Non-Resident Beneficiaries – for non-resident beneficiaries, tax on their share of entitlement or distribution of income is assessed and paid at the estate or trustee level.
- Digital Economy Income – while Singapore has not implemented a Digital Services Tax, the existing income tax framework applies to digital businesses. IRAS provides guidance on how existing rules apply to newer business models in the digital economy, with a focus on the sourcing of income.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Singapore has consistently engaged in discussions and expressed support for the OECD/G20 Inclusive Framework on BEPS, and remains an active participant in discussions related to Amount B. As of early 2026, the OECD is still working on finalising the specific implementation details for Amount B, thus Singapore has not yet implemented Amount B into its domestic legislation.

There is indeed broad support for the objective of Amount B which is to simplify and streamline the application of the arm's length principle for baseline marketing and distribution functions. This is aimed at reducing transfer pricing disputes and compliance burdens.

Singapore typically integrates international standards into its domestic tax legislation but often with local adaptations to suit its specific economic and administrative context. The city state is expected to adopt the OECD framework once it is finalised and widely adopted.

Any potential adaptations or minor departures from the OECD framework would only become clear during the domestic legislative process once the OECD framework is finalised. However, based on Singapore's

past approaches to international tax standards, any deviations would likely aim to ensure administrative feasibility and continued competitiveness, rather than fundamental disagreements with the core principles. The general expectation is for alignment with international consensus to the greatest extent practicable.

4.2 Pillar One – Amount A

Singapore supports the ongoing international efforts to address the tax challenges arising from the digitalisation of the economy, including Pillar One Amount A.

While acknowledging the need for a stable and equitable international tax system, Singapore has also expressed concerns regarding the complexity of Amount A and its potential impact on smaller open economies and investment hubs. Singapore advocates for a solution that is simple to administer, provides tax certainty, and avoids double taxation, while ensuring that its interests as a global business and financial centre are considered. Singapore actively participates in the OECD Inclusive Framework discussions to shape the final design and implementation of Amount A.

4.3 Pillar Two

As of early 2026, Singapore has implemented the global minimum tax under Pillar Two of the OECD/G20 Inclusive Framework on BEPS. This includes the introduction of a Domestic Top-Up Tax (DTT) and the Income Inclusion Rule (IIR), which apply to multinational enterprise groups with annual consolidated revenues of EUR750 million or more.

Singapore first announced in the Budget 2023 its intention to introduce Pillar Two, and the rules are effective for financial years commencing on or after 1 January 2025. The DTT is designed to ensure that any top-up tax required to meet the 15% minimum effective tax rate is collected in Singapore, consistent with the Pillar Two framework.

4.4 Specific Features or Deviations of Pillar Two

The implementation of Pillar Two in Singapore, through the Domestic Top-Up Tax (DTT) and Income Inclusion Rule (IIR), has broadly adopted the OECD Model Rules. However, Singapore's implementation, enacted through the Multinational Enterprise (Minimum Tax) Act 2024 (MMT), deviates slightly from the OECD GloBE rules to maintain competitive incentives while adhering to the global standard.

Key nuances and variations in Singapore's approach include Singapore implementing the Income Inclusion Rule (IIR) and a domestic top-up tax (DTT), referred to as the Qualifying Domestic Minimum Top-Up Tax (QDMTT).

Singapore's MMT Regulations 2024 incorporate the OECD's safe harbours, but there are potential variations in how the regulations are applied to specific entities, with IRAS providing its own e-Tax Guide to clarify these applications.

4.5 Digital Services Tax

At present, Singapore does not impose specific taxes on digital products, such as a Digital Services Tax (DST) or levies on streaming services.

Instead, Goods and Services Tax (GST) applies to imported digital services under the overseas vendor registration regime since 1 January 2020, and to imported low-value goods since 1 January 2023.

These policies are designed to ensure fair competition between local and overseas businesses and to tax consumption within Singapore, in accordance with global initiatives to address the taxation of the digital economy via consumption taxes, pending the implementation of Pillar One.

Singapore's strategy involves active participation in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), pursuing multilateral solutions to the tax challenges brought about by the digitalisation of the economy. Although the current income tax system is applicable to digital enterprises, Singapore has not adopted a unilateral DST.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

In Singapore, tax fraud and tax evasion are generally viewed as criminal offences involving the deliberate misrepresentation or concealment of facts to reduce tax liability. Tax fraud usually implies a higher degree of deception, while tax evasion refers more broadly to actions taken to illegally avoid paying taxes. These offences typically involve falsifying records, making false declarations, or omitting income.

Here is how the tax-related terms are generally defined.

- Tax evasion – unlawful conduct intended to avoid paying tax, typically involving the misrepresentation or concealment of income or other relevant information. Such actions constitute a criminal offence under the ITA.
- Tax fraud – a more serious form of tax evasion involving deliberate deception and criminal intent to obtain a financial advantage.
- Tax avoidance – the lawful arrangement of financial affairs to minimise tax liability. Although lawful, aggressive tax avoidance schemes that lack commercial substance and are primarily designed to secure tax benefits may be challenged by IRAS under general anti-avoidance provisions.
- Abusive schemes/arrangements – tax planning strategies that exploit legislative loopholes to obtain tax advantages that are inconsistent with legislative intent and often lack genuine economic substance.

Singapore's ITA includes a general anti-avoidance rule (GAAR) under Section 33, which empowers IRAS to disregard, vary, or adjust arrangements that have been entered into for the sole or dominant purpose of obtaining a tax benefit.

Legal criteria and indicators for identifying abusive tax schemes or arrangements often include the following.

- Dominant purpose test – whether the arrangement's dominant purpose is to obtain a tax benefit.
- Artificiality of the arrangement – whether the arrangement lacks commercial substance or appears overly complex relative to its stated commercial objective.
- Lack of economic substance – whether transactions generate tax benefits without corresponding genuine economic activity or risk.
- Circular flow of funds – whether funds are routed through multiple entities without a clear business rationale.
- Abuse of tax treaty provisions – using treaty benefits in a manner that is inconsistent with the object and purpose of the treaty (treaty shopping).

5.2 Anti-Avoidance Mechanisms

Singapore implements a comprehensive set of measures to address tax avoidance and to strengthen tax compliance, including measures relevant to tax evasion and fraud.

- General Anti-Avoidance Rule (GAAR), Section 33 of the Income Tax Act – this provision empowers IRAS to disregard or adjust arrangements entered into for the sole or dominant purpose of obtaining a tax benefit.
- Specific anti-avoidance provisions – the Income Tax Act contains targeted rules addressing issues such as transfer pricing, related-party transactions and thin capitalisation. Although Singapore does not prescribe formal thin capitalisation rules, interest deductibility is subject to tests of commerciality and purpose, as well as transfer pricing rules.
- Transfer pricing rules and documentation – Singapore maintains robust transfer pricing guidelines aligned with OECD standards, requiring related-party transactions to be conducted at arm's length. Businesses are also required to prepare and maintain appropriate transfer pricing documentation.
- Exchange of information (EOI) – Singapore actively participates in international EOI mechanisms under its double taxation agreements and various multilateral arrangements, enabling the exchange of information with other tax jurisdictions to help detect non-compliance.
- Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA) – Singapore

has committed to the CRS and has entered into an intergovernmental agreement with the United States to implement FATCA.
- Base Erosion and Profit Shifting (BEPS) measures – Singapore has adopted several BEPS-related initiatives, including measures addressing hybrid mismatches, treaty abuse (through the Multilateral Instrument) and Country-by-Country Reporting (CbCR).
- Tax audits and investigations – IRAS conducts regular audits and investigations to monitor compliance and identify instances of non-compliance.
- Voluntary Disclosure Programme – this programme encourages taxpayers to voluntarily disclose past errors or omissions, and typically results in reduced penalties.

Through these integrated mechanisms, Singapore demonstrates its ongoing commitment to upholding the integrity of its tax system and promoting international co-operation on tax compliance.

5.3 Blacklists and Non-Cooperative Jurisdictions

Singapore does not publish its own public blacklist of non-cooperative or high risk tax jurisdictions. However, it adheres to international standards developed by organisations such as the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes and the Financial Action Task Force (FATF). Singapore's tax authorities take these international lists and recommendations into account, and they may inform risk assessment and compliance measures, including enhanced due diligence or reporting obligations for transactions involving entities located in such jurisdictions.

While Singapore does not generally impose direct punitive tax measures solely on the basis of dealings with entities from jurisdictions identified as non-cooperative by international bodies, such transactions are likely to receive heightened scrutiny from the Inland Revenue Authority of Singapore (IRAS). The IRAS typically applies existing anti avoidance provisions, including the General Anti-Avoidance Rule (GAAR) under Section 33 of the Income Tax Act and transfer pricing regulations, with greater rigour to ensure that transactions are genuine, commercially substantive, and not primarily intended to achieve tax avoidance. In particular, transactions involving entities in low- or no-tax jurisdictions are subject to closer review to prevent artificial profit shifting out of Singapore.

In addition, Singapore continues to monitor and align itself with international standards and lists issued by bodies such as the OECD and the European Union, particularly in relation to tax transparency and the prevention of harmful tax practices.

5.4 Reporting Obligations and Disclosure Regimes

Singapore maintains comprehensive reporting and disclosure obligations to promote tax transparency and support compliance.

Common Reporting Standard (CRS)

As an early adopter of the CRS, Singapore automatically exchanges financial account information with partner jurisdictions. Financial institutions are required to report details of accounts held by foreign tax residents to the Inland Revenue Authority of Singapore (IRAS), which then exchanges this information under the CRS framework.

Foreign Account Tax Compliance Act (FATCA)

Singapore implements FATCA through an Intergovernmental Agreement (IGA) with the United States. Under this arrangement, Singaporean financial institutions report information on accounts held by US persons to IRAS, which subsequently transmits the relevant data to the US Internal Revenue Service (IRS).

Country-by-Country Reporting (CbCR)

Multinational enterprise (MNE) groups headquartered in Singapore with annual consolidated revenue of SGD1.125 billion or more are required to file CbCRs with IRAS. These reports provide information on the global allocation of income, taxes paid, and key indicators of economic activity across jurisdictions.

Annual Tax Returns

All taxpayers, including companies, individuals and self employed persons, are required to file annual income tax returns with IRAS. These returns disclose income earned, as well as any deductions, reliefs or exemptions claimed.

Notification of Chargeable Income (NCI)
Companies are required to file an Estimated Chargeable Income (ECI) and notify IRAS of their chargeability, subject to certain statutory exemptions.

Withholding Tax Reporting
Entities making payments to non-residents that are subject to withholding tax must withhold the relevant amounts and declare and remit them to IRAS within the prescribed timelines.

Voluntary Disclosure Programme
IRAS encourages taxpayers to voluntarily disclose past errors or omissions in their tax filings. Where disclosures are timely and complete, reduced penalties may be granted.

Disclosure of Tax Avoidance Schemes
Although Singapore does not operate a formal mandatory disclosure regime comparable to the European Union's DAC6, IRAS is empowered under Section 33 of the Income Tax Act to request information on arrangements suspected of having a tax avoidance purpose. Taxpayers are generally required to provide complete and accurate disclosures in their tax filings.

Singapore's robust tax reporting framework reflects its commitment to international tax compliance and recognised regulatory standards.

5.5 Role of Tax Authorities and Enforcement Measures
The Inland Revenue Authority of Singapore, IRAS, serves as the principal tax authority and is vested with extensive powers to investigate tax fraud and enforce compliance with tax laws.

Access to Records
IRAS is authorised to request and examine all relevant books, accounts, statements, electronic records, and other documents that are necessary for tax assessment or investigative purposes.

Tax Audits
The Authority conducts desk audits, field audits, and in depth investigations. During an audit, officers may review records, interview relevant personnel, and request additional information where necessary.

Unannounced Visits
Although routine tax investigations rarely involve formal raids, IRAS may carry out unannounced visits or inspections of premises where there are reasonable grounds to believe that relevant documents or information are located. Such visits must be supported by proper authorisation.

Search Warrants
In cases involving suspected serious tax fraud or evasion, IRAS may apply to the courts for search warrants. These warrants allow officers to enter premises, conduct searches, and seize documents or assets as part of the investigation.

Power to Obtain Information
The IRAS has the authority to compel individuals or third parties, including financial institutions, to provide information or documentation that is relevant to an investigation.

Information Sharing
Through Singapore's extensive network of double taxation agreements and international conventions, including the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the IRAS may exchange information with foreign tax authorities.

Power to Intercept and Detain
For serious tax offences, IRAS may involve law enforcement agencies. Subject to judicial oversight, such agencies may intercept communications or detain individuals in connection with an investigation.

Penalties and Prosecution
IRAS may impose administrative penalties for non-compliance, such as late submission of returns or the filing of inaccurate information. Where there is significant tax fraud or evasion, cases may be referred for criminal prosecution.

Power to Assess and Reassess
Based on information obtained during investigations, the IRAS retains the power to raise tax assessments and reassessments, even where a tax return has already been submitted.

Collectively, these powers ensure robust enforcement of Singapore's tax laws and promote compliance across all sectors.

6. Penalties and Sanctions

6.1 Tax Penalties

Penalties related to cross-border transactions are stipulated under the ITA, with variations according to the nature and severity of non-compliance.

- Late filing or payment penalties are imposed for delayed submission of tax returns or payments.
- Negligence penalties apply to errors arising from carelessness, generally ranging from 5% to 200% of the undercharged tax amount.
- Penalties for fraud or wilful evasion, involving deliberate attempts to evade taxes, can reach up to 400% of the undercharged tax and may result in criminal prosecution.

The Comptroller of Income Tax is tasked with administering and enforcing these penalties. The legal framework for tax offences in Singapore is primarily governed by the ITA, which extends to cross-border transactions. IRAS oversees the implementation of sanctions that range from administrative penalties for minor infractions to substantial financial penalties and imprisonment for serious offences such as tax evasion or fraud. Penalties are imposed for various acts, including late filing, incorrect returns, failure to provide information, and wilful evasion.

6.2 Criminal Penalties

Criminal penalties for tax fraud and evasion in Singapore are stringent and may include the following.

- Fines – significant monetary penalties may be imposed.
- Imprisonment – individuals convicted of serious offences may receive custodial sentences.
- Combined penalties – courts may impose both fines and imprisonment concurrently.

The Income Tax Act outlines specific sanctions. For example, Section 95 addresses the submission of incorrect returns without reasonable excuse, while Section 96 relates to wilful tax evasion. Under Section 96, wilful evasion may result in a fine of up to SGD50,000, imprisonment for up to five years, or both. In addition, an offender may be subject to a further penalty of up to 400% of the amount of tax undercharged.

For first-time offenders convicted of wilful tax evasion, the maximum penalties remain a fine of SGD50,000, imprisonment for up to five years, or both. For repeat offenders, the penalties increase to a fine of up to SGD100,000 and imprisonment for up to seven years, or both. Where offences involve goods and services tax, separate penalty regimes apply under the GST Act.

Furthermore, courts may require offenders to pay an additional penalty equal to three times the amount of tax undercharged, in addition to any other penalties prescribed by law.

6.3 Interaction Between Tax and Criminal Procedures

There is no automatic or mandatory referral of all tax fraud cases to the public prosecutor.

The IRAS has its own investigation and enforcement division. For serious cases of tax fraud or evasion, the IRAS works closely with the Public Prosecutor's Office. Co-ordination is ensured through regular communication and collaboration between the IRAS and the Attorney-General's Chambers (AGC), which oversees the Public Prosecutor. The IRAS will prepare detailed investigation reports and evidence, which are then referred to the AGC for review and a decision on prosecution. If a decision to prosecute is made, the Public Prosecutor will lead the criminal proceedings in court. This ensures that legal standards for criminal prosecution are met and that justice is administered effectively.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

The legal instruments governing administrative co-operation in tax matters in Singapore comprise the following.

- Double Tax Agreements (DTAs) – Singapore's DTAs generally incorporate provisions for the exchange of information, consistent with Article 26 of the OECD Model Tax Convention.
- OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters – as a signatory, Singapore participates in an established framework that facilitates comprehensive administrative assistance in tax matters.
- Specific Intergovernmental Agreements – this includes arrangements such as the Intergovernmental Agreement with the United States for the implementation of FATCA.

Singapore's approach to administrative co-operation in tax matters is fundamentally anchored in the following elements.

- DTAs – Singapore maintains an extensive network of more than 100 DTAs, most of which contain clauses enabling the exchange of information between competent authorities. These provisions are typically aligned with Article 26 of the OECD Model Tax Convention.
- Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC): Singapore signed the MAC in 2013 and ratified it in 2015, underscoring its commitment to international tax transparency and co-operation. The MAC provides a robust legal framework for multiple forms of administrative assistance, including the exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, and assistance in the recovery of tax claims.
- Common Reporting Standard (CRS) – introduced through the MAC and domestic legislation, the CRS requires Singapore financial institutions to report financial account information of foreign tax residents to the Inland Revenue Authority of Singapore for automatic exchange with participating jurisdictions.
- Foreign Account Tax Compliance Act (FATCA) – an Intergovernmental Agreement with the United States enables the effective implementation of FATCA and promotes the automatic exchange of financial account information relating to United States persons.
- Domestic legislation – the Income Tax Act and relevant subsidiary legislation provide the domestic legal basis for the implementation of international agreements on administrative co-operation.

7.2 Exchange of Information Clauses in Tax Agreements

Singapore maintains active information exchange with its treaty partners through several established mechanisms.

- Automatic Exchange of Information (AEOI) – Singapore participates in AEOI under the Common Reporting Standard (CRS), commencing exchanges in 2018 with numerous jurisdictions. Additionally, financial account information is exchanged automatically with the United States under the Foreign Account Tax Compliance Act (FATCA).
- Spontaneous Exchange of Information – the Inland Revenue Authority of Singapore (IRAS) may spontaneously share information relevant to another jurisdiction's tax administration, particularly when it suggests potential tax avoidance or evasion.
- Exchange of Information on Request (EOIR) – Singapore provides information upon request from treaty partners, subject to meeting the "foreseeably relevant" standard, pursuant to bilateral Double Tax Agreements (DTAs) and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC).

Through these channels, Singapore demonstrates a strong commitment to international tax transparency and compliance.

7.3 Other Forms of International Tax Collaboration

Singapore engages in a range of multilateral frameworks to enhance international tax co-operation, including the following.

- OECD International Compliance Assurance Programme (ICAP) – since 2021, Singapore has actively participated in ICAP, a voluntary programme designed for multinational enterprises (MNEs) seeking greater certainty on transfer pricing and permanent establishment matters. This initiative facilitates multilateral tax risk assessment and assurance, promoting efficiency and certainty for both taxpayers and tax authorities.
- Joint or Simultaneous Tax Audits – where appropriate, Singapore collaborates with other jurisdictions to conduct joint or simultaneous tax audits, particularly in complex cross-border MNE cases. Although these audits are less frequent than information exchanges, they enable a more holistic approach to addressing tax issues and enhance audit effectiveness.
- BEPS Inclusive Framework – as a member of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), Singapore actively contributes to global initiatives aimed at combating tax avoidance.
- Country-by-Country Reporting (CbCR) – in alignment with the OECD BEPS project, Singapore has implemented CbCR, which enables the collection and exchange of high-level reports on MNE groups' worldwide activities and tax positions with relevant tax administrations.
- Peer reviews – Singapore participates in peer reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes to ensure adherence to international standards on the exchange of information.
- Capacity building – Singapore is also committed to capacity-building efforts, supporting other jurisdictions in strengthening their tax administration capabilities.

Together, these initiatives demonstrate Singapore's commitment to fostering transparency, enhancing compliance, and upholding international tax standards, beyond the use of Mutual Agreement Procedures (MAPs) and Advance Pricing Agreements (APAs).

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Singapore maintains a comprehensive Mutual Agreement Procedure (MAP) programme. The primary legal framework for MAP is established under the MAP articles within Singapore's DTAs, which largely conform to Article 25 of the OECD Model Tax Convention. These provisions empower competent authorities to address and resolve issues related to the interpretation or application of DTAs and to provide relief from double taxation in situations not expressly covered by the agreements. In addition, the ITA grants the IRAS legal authority to implement these international agreements at the domestic level. Singapore's participation in the MLI further strengthens and streamlines the MAP process across its network of tax treaties.

8.2 Application Deadlines

The deadline for submitting a MAP request is generally prescribed by the relevant DTAs. Most DTAs in Singapore are based on the OECD Model, which typically allows a three-year period from the initial notification of the action that results in taxation not in accordance with the Convention. Nevertheless, it is essential to review the terms of the specific DTA applicable, as certain treaties may stipulate alternative time limits. The MLI has also impacted the timeframes for MAP requests under covered tax agreements, broadly harmonising them with the standard three-year period from the date of notification. It is advisable for taxpayers to consult the pertinent DTA to ensure compliance with all requirements.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is generally not prevalent in Singapore's DTAs. Although the OECD Model Tax Convention includes an arbitration provision, Singapore has typically reserved its position and has not broadly implemented mandatory binding arbitration within its DTA network. While certain DTAs may feature non-binding or voluntary arbitration provisions, these are exceptions rather than the norm.

The inclusion of mandatory binding arbitration across all of Singapore's DTAs remains limited. Select newer or renegotiated treaties may incorporate arbitration

clauses, but this practice is not uniform throughout Singapore's treaty framework. Singapore has elected to apply arbitration provisions contained in Part VI of the MLI for covered tax agreements, offering mandatory binding arbitration for unresolved Mutual Agreement Procedure (MAP) cases. However, the applicability of arbitration under the MLI is contingent upon both contracting jurisdictions opting into these provisions and not entering reservations against them. As such, the availability of mandatory binding arbitration varies on a treaty-specific and jurisdictional basis.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Singapore maintains an Advance Pricing Agreement (APA) programme. The legal foundation for APAs is established primarily through administrative guidance issued by the IRAS, and operates within the broader statutory transfer pricing framework under the ITA. APAs are designed to offer tax certainty regarding future transfer pricing arrangements, and mitigate potential disputes. The IRAS's e-Tax Guide, "Advance Pricing Arrangement", provides comprehensive information on the application procedures, required documentation, and relevant processes.

Additionally, the programme enables taxpayers to engage proactively with the IRAS – and, in cases involving cross-border transactions, with foreign tax authorities – to agree on the appropriate transfer pricing methodologies for related-party transactions. This approach ensures greater clarity and compliance for both domestic and international dealings.

9.2 Other Mechanisms

Singapore offers several programmes aimed at enhancing tax certainty in international tax matters.

- Tax rulings – taxpayers may submit requests to the Inland Revenue Authority of Singapore for advance rulings on the tax treatment of specific transactions. These rulings provide clarity on how tax laws will be applied.
- Voluntary Disclosure Programme – primarily designed to rectify past errors with reduced penalties, this programme also promotes transparency, which can help prevent future disputes.
- Enhanced Engagement and Co-operative Compliance Programmes – the IRAS builds relationships with large taxpayers through dedicated relationship managers and offers co-operative compliance schemes. These initiatives foster transparency and mutual understanding, thereby reducing the risk of potential disputes.
- Clarification of tax positions – taxpayers may seek clarification from the IRAS on specific tax issues. This helps ensure the accurate interpretation and application of tax legislation and minimises the likelihood of disagreements.
- Clearance for tax treaty benefits – taxpayers can apply to IRAS for confirmation of their eligibility for tax treaty benefits, such as reduced withholding tax rates.
- Taxpayer engagement and consultation – the IRAS regularly engages with taxpayers and industry groups to provide clarifications and guidance, thereby facilitating greater certainty in tax matters.

In addition to the Advance Pricing Agreement programme, these mechanisms collectively provide robust avenues for achieving certainty in international tax matters in Singapore.

***

Disclaimer: DBS Bank is not a law firm. The information provided in this publication is for general informational purposes only and does not constitute legal advice. Neither of the authors are licensed attorneys or legal professionals under Singapore law to provide legal advice. Readers are advised to consult with a licensed attorney or other qualified professional regarding any legal matters or concerns.

Trends and Developments

Contributed by:
Lee Woon Shiu and Cheung Kuan Swan (Catherine)
DBS Private Bank

DBS Private Bank is the third-largest private bank in Asia, and has a presence in 19 markets globally. As a leading family office practice in Singapore, the firm offers a comprehensive suite of bespoke wealth management solutions, which includes investment advisory, portfolio management, trust, liquidity and estate planning, and family office solutions. In 2023, the firm launched the DBS Multi Family Office Foundry Variable Capital Company, the first bank-backed multi-family office leveraging Singapore's VCC structure, as an attractive alternative for affluent families to manage their wealth without having to establish their own Single-Family Office. DBS also leverages the strengths of the broader DBS Group to service the full spectrum of its clients' wealth management and business needs.

Authors



Lee Woon Shiu is DBS Group's head of wealth planning, family office and insurance solutions, and has more than 25 years of experience in advisory, client development and professional training in family office, trusts, high-net-worth life insurance and estate planning in Asia-Pacific. Woon Shiu attended Yale University and the National University of Singapore where he was a Law Society of Singapore Book Prize Winner. A dual-qualified lawyer of the UK and Singapore, with a STEP certification, Woon Shiu is also adjunct associate professor at the Nanyang Technological University where he regularly lectures on wealth structuring and estate succession. He is also a board member of the DBS Foundation.



Cheung Kuan Swan (Catherine) is DBS Group's head of the wealth planning solutions hub, and provides advice, training and transactional support on a wide spectrum of legal, regulatory and tax issues for bespoke structuring, product guides and trustee manuals. Prior to crossing into wealth management, Catherine was a practising lawyer for six years in Singapore and Hong Kong. She has over 20 years of experience with key roles in trust, wealth planning advisory, legal, compliance and fiduciary functions. A triple-qualified lawyer of Singapore, Hong Kong and the UK, Catherine is also a Barrister (Middle Temple Inns of Courts), a qualified Trust & Estate Practitioner and holds an LLM in Commercial & Corporate Law.

DBS Private Bank

12 Marina Boulevard
Level 6
DBS Asia Central
Marina Bay Financial Centre Tower 3
Singapore
018982

Tel: +65 9021 5130
Email: catherineks@dbs.com
Web: www.dbs.com.sg

DBS PRIVATE BANK

Contributed by: Lee Woon Shiu and Cheung Kuan Swan (Catherine), **DBS Private Bank**

Singapore as a Tax and Wealth Hub: Incentives, Transparency and New Global Rules

Introduction

Singapore is widely known for its efficient and simple tax system, making it an attractive global hub for businesses around the world. Like many jurisdictions, Singapore's tax landscape is continuously evolving, driven by global economic shifts, international tax initiatives and domestic policy objectives which are aimed at fostering sustainable growth and maintaining a competitive edge.

Governments around the world are strengthening cross-border collaboration and information exchange to combat tax evasion, while the surge in digital business models challenges conventional tax systems and calls for new rules to address digital profits.

This shift is driven by a variety of influential factors, including regulatory initiatives like the OECD's Pillar Two framework which mandates minimum global corporate tax rates and reduces opportunities for profit shifting. This also means rising expectations for greater tax transparency, heightened scrutiny and sustained competitiveness globally.

As Singapore is committed to upholding robust governance and international best practices, the authority has intensified its efforts in recent years to modernise tax compliance systems in response to economic volatility and ongoing fiscal demands. These efforts ensure that businesses operating in Singapore remain competitive while maintaining rigorous transparency standards.

Singapore's tax regime

Singapore's tax policy, characterised by its adaptability to global challenges while maintaining competitiveness, is shaped by relevant case law and targeted incentives that continue to play a pivotal role in strengthening the economy.

Corporate income tax (CIT)

The corporate income tax rate in Singapore is a flat 17% for both local and foreign companies. However, the actual effective tax rate can be lower due to various incentives and rebates.

In the Budget 2025, a 50% CIT rebate was extended for the year of assessment 2025, with eligible companies being able to receive a minimum of SGD2,000 (up to a maximum of SGD40,000) through a Rebate Cash Grant if they employed at least one local employee in 2024. An adjustment was made to this CIT rebate in the Budget 2026 where the government introduced a CIT rebate of 40% for the year of assessment 2026, capped at SGD30,000 per company. This is applicable to all active taxpaying companies, whether they are tax resident or non-resident in Singapore, provided they meet the criteria. Foreign companies with taxable income in Singapore are included so long as they employed at least one local employee in calendar year 2025, in which case they will receive a minimum cash grant of SGD1,500 that will be disbursed from the second quarter of 2026.

Personal income tax (PIT)

Singapore continues to operate a progressive PIT system. For the year of assessment (YA) 2026, the tax rates remain consistent with those from YA 2024 onwards, with the highest PIT at 24%. Chargeable income between SGD500,000 and SGD1 million is taxed at 23% and income exceeding SGD1 million is taxed at 24%.

A non-resident's employment income is taxed at a flat rate of 15% or the progressive resident rates, whichever yields a higher tax amount. However, a flat rate of 24% will apply to a non-resident individual's income that is derived from employment such as director's fees, consultation fees and rental income. Non-resident individuals who are in short-term employment working in Singapore for 60 days or less in a calendar year, can be exempt from income tax if certain criteria and specific conditions are met (the "60-Day Rule Exemption"). The duration of 60 days or less in a calendar year includes weekends and public holidays within the work period. To qualify for the 60-Day Rule Exemption, the non-resident individual must not be earning income as a director, public entertainer, or professional exercising a vocation. The employment must be with a foreign employer who is not a resident of Singapore and that the income is not borne by a permanent establishment or a fixed base that the employer has in Singapore.

Goods and Services Tax (GST)

GST in Singapore has undergone a phased increase. It rose from 7% to 8% on 1 January 2023 and further to its current rate of 9% on 1 January 2024. This 9% rate is the GST for Singapore in 2026 and is applied to most goods and services supplied within or imported into the country.

These tax adjustments are aimed at supporting businesses and individuals operating in Singapore.

Tax incentive schemes

Singapore employs a broad array of tax incentive schemes to strengthen its economic position and attract global investment. Several such incentives, playing a pivotal role in supporting high-value industries, fostering innovation and encouraging entrepreneurship, have been extended and enhanced.

For economic growth

Key schemes include the Pioneer Service Incentive (PSI) and Development and Expansion Incentive (DEI), which offer tax exemptions or concessions to companies driving industrial development and economic growth, particularly in advanced manufacturing, technology and analytics.

To promote innovation and research, the government provides generous research and development (R&D) tax deductions and allowances, which can be up to 300% for qualifying expenditures, benefiting sectors such as AI, robotics, biotechnology and clean energy. The Intellectual Property Development Incentive (IDI), aimed at supporting businesses and stimulating commercialisation of IP, offers reduced tax rates for qualifying intellectual property income.

The Start-Up Tax Exemption (SUTE), designed to encourage entrepreneurial growth, exempts the first SGD200,000 of a start-up's income from tax in its initial three years. This helps start-ups reinvest and expand, especially in digital media, e-commerce and fintech.

The Financial Sector Incentive (FSI) scheme helps Singapore maintain its global financial hub status by offering lower tax rates to eligible financial institutions, including fund managers. The FSI-Fund Management Listing provides a 5% tax rate for fund managers listing on the Singapore Exchange, while the FSI-Fund Management Singapore Equities scheme grants a full tax exemption for managers investing in Singapore equities. This helps to support the local capital markets and encourage listings in Singapore.

The Maritime Sector Incentive (MSI) boosts Singapore's maritime industry with tax exemptions or reduced rates for companies in international shipping, maritime leasing and related services that establish or expand operations locally.

Biomedical science incentives encourage growth in pharmaceuticals, biotechnology and medical technology by offering enhanced support for clinical trials, specialised facilities like Biopolis and up to 250% tax deductions on R&D expenses incurred in Singapore, attracting foreign investment and innovation.

These industry-specific incentives, whether through a lower tax rate or attractive tax deductions, aim to draw foreign investment, promote high-value activities and strengthen Singapore's global competitiveness.

For growth in the family office and wealth management space

The Finance and Treasury Centre (FTC) incentive, a Singapore Economic Development Board (EDB) initiative designed to encourage companies to use Singapore as a regional base for treasury, finance and risk management activities, has been extended until 31 December 2031. Approved FTC companies can benefit from a reduced corporate tax rate of 8% or 10% on qualifying income and withholding tax exemptions on interest payments.

The two most-used tax exemption schemes administered by the Monetary Authority of Singapore (MAS) in a single-family office (SFO) based structure set-up in Singapore, namely the Enhanced-Tier Fund Tax Incentive Scheme (S13U) and Resident Fund Tax Incentive Scheme (S13O) under the Income Tax Act (S13U and S13O; collectively the "Schemes"), offer tax exemptions on specified income from designated investments to encourage onshore fund management and family office growth. The Schemes, intended to attract and retain "high-quality" capital that delivers

meaningful benefits to the local economy, have been refined a few times in recent years.

These changes reflect the government's commitment to ensuring that the wealth managed in Singapore contributes directly to domestic growth and development, especially as the city-state positions itself as a leading hub for wealth management.

From 2025/2026, the requirements for SFOs seeking tax exemption have become more rigorous. The minimum assets under management (AUM) thresholds have been raised, ensuring that only substantial and professionally managed funds qualify. The scope of "Designated Investments" has been redefined to prioritise investments that generate tangible benefits within Singapore. This means that SFOs must focus on deploying capital into areas that have a clear domestic economic or social impact such as local enterprises, infrastructure, and projects that foster innovation or sustainability.

As of 2025–2026, SFOs operating under both the Schemes are subject to a tiered annual business spending requirement which is directly linked to their AUM. For AUM below SGD50 million (ie, S13O), a minimum local business spending (LBS) of SGD200,000 is required. If the AUM is between SGD50 million and SGD100 million, the minimum total business spending is required to be SGD500,000, of which SGD200,000 must be LBS. For SFOs with an AUM of SGD100 million or more, the mandatory annual LBS is SGD1 million. This eligible LBS encompasses various categories such as management fees, tax advisory fees, legal fees and salaries paid to Singapore-based professionals.

Toward the end of 2025, MAS announced plans to review and simplify the Schemes. The primary goal was to reduce the administrative burden on family offices while better aligning the framework with current industry need, and ensuring Singapore remains a leading centre for global wealth management, especially amid rising competition from other regional centres. Some simplifications include the following.

- Reduction in documentation – the aim is to reduce the amount of paperwork at the initial stage which includes minimising excessive pre-approval checks and using AI. More standardised templates for investment strategies and ownership declarations are expected in order to reduce the need for bespoke legal drafting for every submission. A private banking working group, co-led by MAS, has been established to improve account opening efficiency through AI and automation.
- Easing of reporting requirements – a self-declaration model for certain ongoing criteria is in the works and expected to be launched soon. This is to move away from the need for exhaustive annual audits for every single criterion check.
- Expanded eligible investments – to encourage more diverse and impactful investing, the scope of what qualifies as eligible investments has broadened to include non-listed funds distributed by Singapore-licensed financial institutions and certain green or climate-related products. There is also a renewed emphasis on Singapore-listed equities, REITs, and Business Trusts.

To boost philanthropy

In recent years, philanthropy has become a hot topic in the wealth management space. With more private banking clients expressing interest in making an impact by giving back to society, more philanthropic funds are expected to flow into Singapore. The Singapore government has introduced a range of tax incentives in the philanthropic space primarily to foster a strong giving culture, strengthen social cohesion and position Singapore as a leading regional and global philanthropic hub.

In the past, Singapore's tax deduction framework for donations was primarily focused on local charitable giving where tax deductions were generally granted only for donations made to Institutions of a Public Character (IPCs) or the Singapore government for causes benefiting the local community. This meant that donations to overseas causes typically did not qualify for tax deductions. The rationale behind this was a bias towards "doing good in Singapore", ensuring that tax-deductible donations exclusively benefited the Singapore community. Approved donations such as cash donations to IPCs could receive a 250% tax deduction on the donated amount.

The introduction of the Philanthropy Tax Incentive Scheme (PTIS) in January 2024 and Overseas Humanitarian Assistance Tax Deduction Scheme (OHAS) in January 2025 marked a significant shift in this policy, specifically allowing for tax deductions on certain overseas donations under defined conditions. The PTIS, effective from 1 January 2024, allows qualifying SFOs to claim a 100% tax deduction for overseas donations made through qualifying local intermediaries, capped at 40% of their statutory income. Similarly, OHAS, piloted from 1 January 2025 to 31 December 2028, grants a 100% tax deduction for qualifying cash donations made towards approved overseas emergency humanitarian assistance causes through designated charities, also capped at 40% of the donor's statutory income.

These new schemes explicitly changed the long-standing principle that donations to foreign charities would not qualify for tax deductions.

The Not-for-Profit Organisation Tax Incentive (NPOTI), a tax scheme introduced in 2007 to attract organisations that add economic value, offers tax exemptions to qualifying NPOs on their income for up to ten years and this scheme was recently extended to 31 December 2032.

The Corporate Volunteer Scheme (CVS) which is to be extended to 31 December 2029, is a government initiative that allows businesses to claim a 250% tax deduction on qualifying expenditure such as employee wages, transportation and material costs when they volunteer with registered IPCs. The CVS, enhanced in 2024 to encourage corporate social responsibility, covers virtual and off-site activities, with a capped expenditure of SGD100,000 per IPC annually.

Through these measures, Singapore aims to attract philanthropic capital, encouraging sustained contributions from individuals, corporations and family offices, ensuring that charitable donations are utilised effectively and solidifying its reputation as an attractive base for international philanthropy.

The implementation of Pillar Two of the Base Erosion and Profit Shifting (BEPS) 2.0 (Pillar Two BEPS 2.0)

A major global development influencing Singapore's corporate tax landscape is the OECD's Base Erosion and Profit Shifting (BEPS) 2.0 framework which introduces a global minimum effective tax rate of 15% for large multinational enterprises (MNEs) with global annual consolidated revenues of EUR750 million (approximately SGD1.1 billion) or more.

Implications for Singapore

Singapore has begun the implementation of the Pillar Two BEPS 2.0 initiative through the Multinational Enterprise (Minimum Tax) Act 2024 (MMT Act), which became effective for financial years starting on or after 1 January 2025.

The MMT Act primarily implements (i) the Domestic Top-Up Tax (DTT) and (ii) the Multinational Enterprise (MNE) Top-Up Tax (MTT), which is Singapore's version of the income inclusion rule (IRR). These measures ensure a minimum effective tax rate (ETR) of 15% on MNE profits within Singapore for groups with consolidated revenues exceeding EUR750 million.

The DTT allows Singapore the first right to collect a "top-up" tax from MNEs operating within Singapore if these entities pay an effective tax rate (ETR) of less than 15% on their Singapore profits, thereby safeguarding Singapore's taxing rights.

The MTT enables Singapore to collect top-up tax from Singapore-parented MNEs that have subsidiaries in foreign jurisdictions where the ETR is below 15%. Where the source country does not have a DTT and the local tax is still below 15%, the parent's home country applies the IIR to collect the remaining tax.

While these components are put in place to achieve the 15% minimum ETR globally, it is important to note that the full scope of Pillar Two, including components like the Undertaxed Profits Rule (UTPR), may involve further phased implementation or have different effective dates in various jurisdictions.

Impact on businesses in Singapore

For decades, many MNEs in Singapore enjoyed effective tax rates significantly lower than the statutory 17% due to various tax incentives (eg, the PSI and DEI schemes mentioned above). In-scope MNEs that previously paid less than 15% due to incentives will now see their effective tax rate (ETR) rise to the global 15% minimum.

According to the Singapore Ministry of Finance's estimates and official Budget announcements, the Pillar Two BEPS 2.0 is projected to yield additional tax revenue from FY2027 onwards, increasing Singapore's corporate tax revenue. However, to ensure that Singapore remains an attractive headquarters location for reasons beyond tax, the government has signalled that this bigger amount of tax revenue will be reinvested into the business ecosystem with the aim of improving infrastructure, talent development and green energy transitions.

The transition to Pillar Two BEPS 2.0 is not just a fiscal shift but also an operational one. Companies will need to enhance their data management processes, register promptly with the Inland Revenue Authority of Singapore (IRAS), and closely monitor developments in both local and international tax regulations. These steps are essential for maintaining compliance and strategically managing their tax obligations amid evolving global standards.

Implications for the tax landscape

Singapore recognises that traditional tax incentives with lower tax rates alone are becoming less effective due to their benefits being offset by the global minimum tax. In response, the government is adopting alternative "non-tax" measures such as the Refundable Investment Credit (RIC), which qualifies as a "qualified refundable tax credit". Under Pillar Two BEPS 2.0 regulations, this credit is classified as income rather than a reduction in taxes, making it less likely to prompt a top-up tax compared to conventional exemptions. Since it is regarded as income under Pillar Two BEPS 2.0 rules, the likelihood of triggering additional taxation is reduced.

International tax agreements

Singapore actively engages in international tax cooperation, maintaining an extensive network of almost 100 Double Taxation Agreements (DTAs). These DTAs, along with Exchange of Information (EOI) arrangements, are crucial in preventing tax evasion and ensuring adherence to global tax standards. Singapore has also adopted the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). This adoption demonstrates Singapore's commitment to implementing minimum standards for preventing treaty abuse, thereby strategically recalibrating its approach to maintain competitiveness in the global tax landscape.

Relevant case law

The Missing Trader Fraud (MTF) Crackdowns in Singapore in 2024 and 2025 demonstrate a clear and firm direction for the nation's tax landscape, emphasising stricter compliance and enhanced accountability, particularly concerning GST. These cases involved the High Court upholding the Comptroller's decision to deny GST input tax claims from businesses found to be part of the MTF arrangements. A key aspect reinforced by these rulings is the "Knowledge Principle", which asserts that businesses lose their right to GST refunds and face a 10% surcharge if they "knew or should have known" their transactions were part of a fraudulent chain. This signals a significant shift towards mandating rigorous due diligence for all GST-registered entities, placing a greater burden on them to ensure the legitimacy and transparency of their supply chains.

The overarching message from these cases is that Singapore is adopting a proactive stance to combat tax fraud, aiming to cultivate a robust and defined tax environment that rewards legitimate economic activity while simultaneously clamping down on evasion through stringent internal controls and compliance frameworks.

Conclusion

Singapore's tax system continues to adapt to local and global changes and this is evident in the recent developments to its corporate and personal taxes, tax-related incentive schemes and a gradual GST hike. The city-state's participation in international

frameworks such as introducing Pillar Two BEPS 2.0 which highlights its global responsibility, has significant impact on businesses in Singapore. MNEs that previously benefited from tax incentives and paid less than the 15% ETR will now see their ETR rise to this minimum. This shift necessitates that businesses prepare for more detailed data collection, ensure timely registration with the IRAS, and stay updated on the interaction between Singapore's tax framework and foreign regimes to maintain compliance and optimise their tax positions. While traditional tax incentives offering lower rates may become less effective, Singapore is adopting "non-tax" measures like the RIC to attract and retain businesses, leveraging the additional tax revenue from Pillar Two BEPS 2.0 to improve infrastructure, talent development, and green energy transitions. The enhanced tax incentives will continue to attract investment and support innovation with a clear message to businesses that tax benefits are intended as a reward for investment, innovation, sustainability and local employment.

Singapore's ongoing competitiveness will depend not only on attractive tax rates, but also on critical factors such as maintaining a strong legal framework, a highly skilled workforce, advanced digital infrastructure and targeted industry incentives.

***

Disclaimer: DBS Bank is not a law firm. The information provided in this article is for general informational purposes only and does not constitute legal advice. Neither of the authors are licensed attorneys or legal professionals under Singapore law to provide legal advice. Readers are advised to consult with a licensed attorney or other qualified professional regarding any legal matters or concerns.

SOUTH KOREA



Law and Practice

Contributed by:
Je-Heum Baik, Chang Hee Lee, Maria Chang and Min Kim
Shin & Kim

Contents

1. Sources and Principles p.410
1.1 Domestic Sources of International Tax Law p.410
1.2 Hierarchy of Sources p.410
1.3 OECD Model/United Nations Influence on Treaty Practice p.410
1.4 Multilateral Instrument p.411

2. Territoriality, Residence and Permanent Establishment p.411
2.1 General Principle of Territorial Taxation p.411
2.2 Tax Residence of Individuals p.411
2.3 Taxation of Resident Individuals p.411
2.4 Taxation of Non-Resident Individuals p.412
2.5 Tax Residence of Legal Entities p.412
2.6 Definition of Permanent Establishment p.412

3. Taxation of Cross-Border Income p.413
3.1 Income From Immovable Property p.413
3.2 Business Profits p.414
3.3 Passive Income p.414
3.4 Capital Gains p.414
3.5 Employment Income p.414
3.6 Other Income p.415

4. OECD/G20 Global Tax Reform p.415
4.1 Pillar One – Amount B p.415
4.2 Pillar One – Amount A p.415
4.3 Pillar Two p.415
4.4 Specific Features or Deviations of Pillar Two p.415
4.5 Digital Services Tax p.415

5. Anti-Avoidance and Anti-Evasion Measures p.415
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.415
5.2 Anti-Avoidance Mechanisms p.416
5.3 Blacklists and Non-Cooperative Jurisdictions p.417
5.4 Reporting Obligations and Disclosure Regimes p.417
5.5 Role of Tax Authorities and Enforcement Measures p.417

6. Penalties and Sanctions p.418
6.1 Tax Penalties p.418
6.2 Criminal Penalties p.418
6.3 Interaction Between Tax and Criminal Procedures p.419

7. Administrative Co-Operation p.419
7.1 Legal Framework for Administrative Co-Operation p.419
7.2 Exchange of Information Clauses in Tax Agreements p.420
7.3 Other Forms of International Tax Collaboration p.420

8. Mutual Agreement Procedures and Arbitration p.420
8.1 Availability and Legal Basis p.420
8.2 Application Deadlines p.420
8.3 Mandatory Binding Arbitration p.420

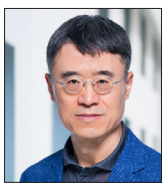
9. Dispute Prevention p.420
9.1 Advance Pricing Agreements p.420
9.2 Other Mechanisms p.421

Shin & Kim is a top-tier Korean law firm with a stellar record as trusted adviser to the world's leading Korean and multinational corporations, financial institutions and government entities on business-critical and ground-breaking mandates. The firm is one of the largest, with over 800 professionals (including Korean and foreign attorneys, patent attorneys, tax attorneys, certified public accountants, customs specialists and other advisers). These professionals work in close-knit teams to deliver client-focused results through offices in Korea and Asia, together with its unrivalled network of leading local firms around the world. Shin & Kim's clients rely on the firm's commitment to quality and pursuit of the clients' commercial objectives. The tax practice consists of over 50 lawyers, CPAs and former government officials from the National Tax Service, Ministry of Strategy and Finance, and Korea Customs Service. The team advises on all types of domestic and international tax-related matters, including tax audit defence, mock tax audits, advice on international transactions and tax treaties, transfer pricing, as well as customs-related advice.

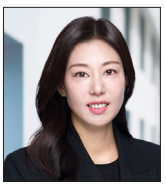
Authors



Je-Heum Baik is a senior partner at Shin & Kim, mainly practising in the areas of tax appeals, tax advisory services, tax investigations and customs. Mr Baik has significant experience litigating corporate tax matters on behalf of financial institutions, large corporates and foreign entities. He provides practical and distinguished tax advice based on detailed case studies and reviews. During his long career as a tax attorney at Kim & Chang, Mr Baik successfully handled prominent tax cases with precedent-setting decisions, including the largest tax case in Korea involving KRW1.7 trillion, cementing his reputation as among the best tax lawyers.



Chang Hee Lee of the Seoul National University School of Law is a senior adviser at Shin & Kim, mainly practising in the areas of general tax consulting, M&A and corporate accounting. Prof. Lee taught tax law for over 30 years at the Seoul National University School of Law, Harvard Law School, NYU Law School, University of Tokyo and other places around the world. Before receiving his LL.M. and the SJD degrees from the Harvard Law School in 1991 and 1994, he practised law and accountancy for over eight years in Seoul and Washington, DC.



Maria Chang is a senior foreign attorney in the Tax practice group at Shin & Kim. Ms Chang advises on a wide range of tax issues for foreign clients across various industry sectors, including structuring, tax planning, treaty interpretation and cross-border transactions. She also assists foreign clients in managing tax controversies, including tax audit defence, tax appeals and litigation.



Min Kim is a partner at Shin & Kim whose main practice areas include filing requests for correction, tax advisory services, tax audit response, tax appeals and litigation. Mr Kim has in-depth experience in providing tax advisory services for domestic and foreign corporations and family business owners. As the only lawyer to have served across all key divisions of the National Tax Service – including the Tax Resource, Investigation and Litigation Bureaus – he offers a peerless depth of institutional insight. Over the past decade, he has led high-stakes teams and delivered differentiated solutions in international taxation and wealth succession.

Contributed by: Je-Heum Baik, Chang Hee Lee, Maria Chang and Min Kim, **Shin & Kim**

Shin & Kim

23rd Floor, D-Tower (D2) 17 Jongno 3-gil,
Jongno-gu,
Seoul,
South Korea, 03155

Tel: +82 2 316 4114
Fax: +82 2 756 6226
Email: shinkim@shinkim.com
Web: www.shinkim.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The Constitution of the Republic of Korea constitutes the supreme source of law, and two constitutional principles are particularly relevant to international taxation. Article 59 establishes the "no taxation without law" principle, requiring National Assembly legislation for any tax imposition. This restricts the government from taxing foreign entities without clear statutory backing. Supplementing this, Article 6 (1) grants constitutional treaties the same legal standing as domestic law. Consequently, tax treaties generally supersede domestic statutes to the extent that the lex specialis principle applies.

International taxation in Korea is primarily governed by the Law for the Coordination of International Tax Affairs (LCITA), as well as the Corporate Income Tax Act (CITA) and Individual Income Tax Act (IITA). The LCITA specifically regulates transfer pricing, thin capitalisation, controlled foreign corporation rules and the mutual agreement procedure (MAP). Meanwhile, the CITA and IITA provide the underlying definitions for Korean-sourced income and permanent establishments, filling gaps where treaties are silent.

Korea's commitment to preventing double taxation is reflected in its 95+ bilateral tax treaties. While largely based on the OECD Model, the network includes UN Model-influenced treaties and is currently being modernised through the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, or Multilateral Instrument (MLI), to ensure alignment with contemporary international standards.

1.2 Hierarchy of Sources

Tax treaties generally prevail over domestic law, unless specifically overridden by the latter. Article 6 (1) of the Constitution provides that treaties concluded and promulgated under the Constitution have the same legal effect as domestic legislation.

While tax treaties generally prevail with respect to substantive taxing law, procedural matters – such as filing obligations, payment methods and penalties – are typically governed by Korean domestic law. Moreover, domestic tax law continues to apply where a particular category of income is not covered by an applicable tax treaty.

1.3 OECD Model/United Nations Influence on Treaty Practice

Korea's tax treaty practice generally aligns with the OECD Model Tax Convention, particularly in the more recent treaties. Korea's treaty policy has evolved through distinct phases, transitioning from a source-based approach consistent with the UN Model Tax Convention to a residence-based approach reflecting the OECD Model as the Korean economy has matured. During the 1970s and 1980s, when Korea was primarily a capital-importing country, it favoured the UN Model in order to preserve broader source-country taxing rights. Most significantly, the US tax treaty – signed in 1976 – remains in force, its provisions still governed by language now half a century old. Following Korea's accession to the OECD in 1996, the OECD Model has served as the primary framework

for nearly all newly concluded and renegotiated tax treaties.

Notwithstanding this general alignment with the OECD Model, Korea's tax treaties continue to retain "UN-style" source-based taxing rights in specific areas. For example, many Korean tax treaties include a Service Permanent Establishment provision, even in the absence of a fixed place of business. Under these provisions, a permanent establishment (PE) may be deemed to exist where a foreign enterprise furnishes services, including consultancy services, in Korea for a specified duration (commonly exceeding six months or 183 days).

1.4 Multilateral Instrument

Korea ratified the MLI on 13 May 2020, to modify its bilateral tax treaties and address base erosion and profit shifting (BEPS). The MLI entered into force for Korea on 1 September 2020, and generally applies to taxes withheld at source on payments made on or after 1 January 2021, and to other taxes for taxable periods beginning on or after 1 March 2021.

With respect to Article 7 of the MLI (Prevention of Treaty Abuse), Korea adopted the Principal Purpose Test (PPT) set out in Article 7 (1). Under the PPT, a treaty benefit may be denied where it is reasonable to conclude, based on all relevant facts and circumstances, that obtaining such benefit was one of the principal purposes of an arrangement or transaction, unless granting the benefit would be consistent with the object and purpose of the relevant Covered Tax Agreement.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

The territorial scope of taxation is primarily determined by a taxpayer's residency status, which distinguishes between worldwide and territorial taxation. The extent of a taxpayer's tax liability depends on the degree of the taxpayer's connection to the country.

Residents and domestic corporations are subject to worldwide taxation. In contrast, non-residents and foreign corporations are subject to territorial taxation only, which means that they are liable for Korean tax only on income sourced within the territory of the Republic of Korea.

2.2 Tax Residence of Individuals

Under the IITA, an individual is classified as a resident of Korea if either of the following is satisfied.

Domicile

An individual is deemed a resident if they maintain a domicile in Korea. The existence of a domicile is determined based on objective indicators of "living ties" with Korea, including, among others, when the individual:

- has an occupation that normally requires residence in Korea for 183 days or more; or
- has family members residing in Korea with whom the individual shares their livelihood, and, based on occupation and property, is expected to reside in Korea continuously for 183 days or more.

Residence

An individual is also treated as a resident if they maintain a place of residence (abode) in Korea for 183 days or more. Historically, this 183-day threshold was applied on a calendar-year basis. Effective from 2026, however, a new "rolling period" rule applies, and an individual will be deemed a resident even when the aggregate 183-day period spans over two years. This amendment is intended to prevent an individual from splitting their stay over a two-year period to avoid residency status.

2.3 Taxation of Resident Individuals

Korean tax residents are generally subject to taxation on their worldwide income. Korean domestic law provides transitional relief and preferential regimes, particularly for expatriates and other individuals with cross-border income or assets.

Short-Term Residents (Five Years or Less)

Individuals who have been Korean tax residents for a total of five years or less during the preceding ten-year period are not fully subject to worldwide taxation. During this grace period, taxation is limited to:

- income derived from Korean sources; and
- foreign-source income only to the extent that such income is paid in Korea or remitted into a Korean bank account.

Long-Term Residents (More Than Five Years)

Once an individual exceeds the five-year threshold, they become fully subject to Korean taxation on their worldwide income, irrespective of where the income is earned, paid or held.

Notwithstanding the scope of worldwide taxation, Korea offers several mechanisms to mitigate the overall tax burden, particularly for expatriates and high-income individuals.

Flat Tax Regime for Foreign Employees

Foreign employees may elect to pay a flat tax rate of 19% (20.9% including local income tax) to their gross employment income, in lieu of the progressive income tax rates, for up to 20 years.

Tax Incentives for Foreign Engineers and Researchers

Qualified foreign engineers or researchers engaged in research and development activities may be eligible for a 50% reduction in individual income tax for a period of up to ten years, subject to statutory requirements.

2.4 Taxation of Non-Resident Individuals

Three possibilities exist under the IITA for taxing Korean-sourced income of non-residents, depending on the character of the income and the Korean tax presence of the taxpayer.

Capital gains from real estate and retirement income are taxed in the same way regardless of residence in Korea. Even a non-resident must file a tax return for capital gains from real estate in Korea, for graduated taxation of the net gain. An eligible portion of severance pay may be considered tax-preferred retirement income subject to tax return, unless the payor withheld an exact amount of the tax.

Non-residents who maintain a place of business or own income-generating real estate in Korea must file tax returns and pay taxes on the aggregate amount of any and all kinds of Korean-sourced income (global income) subject to the graduated tax rates. The global income tax base is, in principle, based on the net income concept, but Korean law does not permit expense deductions for financial income. For wages and salaries, statutory deduction mandatorily applies in place of itemised actual expenses.

When a non-resident payee without a fixed place of business receives Korean-sourced income (other than retirement income or proceeds from selling real estate), withholding tax applies at the source. The withholding tax rate differs among different types of income. For wages and salaries, the same graduated rates applicable to resident employees also applies to non-resident employees. For other types of income including financial income, the IITA withholding tax rate for non-residents is higher than that for residents, unless otherwise dictated by an applicable treaty.

2.5 Tax Residence of Legal Entities

The distinction between a domestic and foreign corporation depends on the location of the home or principal office, or place of effective management. A foreign corporation is taxed only on Korean-sourced income, while a domestic corporation is taxed on its worldwide income.

2.6 Definition of Permanent Establishment

The Korean domestic law equivalent to a treaty PE is a fixed place of business. The CITA defines it as a fixed place through which a foreign corporation carries on all or part of its business activities in Korea.

Typical examples of a fixed place of business include:

- branches, offices, or other places of management or sales;
- factories, workshops or warehouses;
- building, construction, installation or assembly projects that continue for a specified period (generally exceeding six months); and
- service activities carried out in Korea, where services (including consultancy services) are furnished by employees or other personnel for a period exceeding six months within any 12-month period.

Even in the absence of a fixed place, a foreign corporation will be deemed to have a domestic place of business if it operates through a dependent agent in Korea. This "agent" includes a person who:

- has, and habitually exercises, the authority to conclude contracts on behalf of the foreign corporation; or
- habitually plays a principal role leading to the conclusion of contracts that are routinely finalised without material modification by the foreign corporation.

When determining the existence of a PE, the specific treaty definition prevails; however, the CITA definition of a "domestic place of business" is so closely aligned that the two are often functionally indistinguishable. Differences may arise, in particular, with respect to construction or service activities. For instance, many of Korea's tax treaties establish a 12-month threshold for a construction site PE, thereby protecting shorter-term projects from domestic income tax liability.

The treaty threshold is not necessarily above the CITA threshold. Although most of the treaties that have been newly executed or revised since Korea's 1996 accession to the OECD follow the OECD Model Tax Convention, some older treaties still remain in effect. Even among more recent treaties, deviations from the OECD Model Tax Convention persist, particularly when the counterparty is a developing nation.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

The taxation of immovable property is generally divided into two principal categories: rental or lease income (recurring income) and capital gains (income realised upon disposition).

Rental or lease income from immovable property is generally classified as business income for Korean tax purposes. Resident individuals and domestic corporations are subject to tax on their worldwide income including the rental or lease income. For individuals, such income is aggregated with other categories of income (such as employment income and interest income) and taxed at progressive rates ranging from 6% to 45%, plus a 10% local income tax. For domestic corporations, such income is included in the annual income tax. For non-residents, the very existence of real property in Korea is functionally equivalent to a fixed place of business under domestic law (see **2.4 Taxation of Non-Resident Individuals**); under typical tax treaties, income derived from real property remains taxable in the source state, regardless of whether the recipient maintains a PE. Non-residents are subject to the same progressive tax rates as residents on their Korean-sourced rental income. Furthermore, they are required to file an annual global income tax return, following the same compliance procedures as resident taxpayers.

Capital gains from immovable property are classified as schedular income, meaning they are taxed separately rather than being bundled into the global income basket. However, this separation does not suggest a lower tax burden. In view of the historical speculation and pervasive increase in land prices, capital gains from immovable property are often subject to a higher tax burden than ordinary global income. Withholding tax applies to non-resident sellers in the amount of 11% (including local income tax) of the sales proceeds or 22% (including local income tax) of the net gain, whichever is lower, but the withholding will not affect the tax burden as the withheld tax is fully creditable. A typical treaty provision such as Article 13 (1) of the OECD Model Tax Convention does not offer any protection. Of course, Korea does not tax non-Korean capital gains derived by non-residents.

For individual sellers, the tax rate mostly depends on the holding period of the property. Short-term holdings – generally properties held for less than two years – are subject to significantly higher tax rates, which may reach up to 70% (excluding local income tax). Effective from 1 January 2026, even harsher surtaxes apply to multi-homeowners. In particular, individuals owning three or more residential properties located in designated "regulated areas" may be subject to substantially increased effective tax rates, which can reach up to approximately 82.5% when local income tax is included. A portion of the long-term (three years or longer) capital gains is deductible. For residents, the deduction is more generous where the property

is the only house that the seller owns, but in principle this privilege does not apply for non-residents.

3.2 Business Profits

Business profits, referring to any and all income of for-profit corporations and income earned by individuals from continuous or recurrent business activities, are taxed on a net income basis under the IITA and the CITA respectively. For individual taxpayers, whether a particular economic activity constitutes a "business" is frequently disputed.

Ordinary and necessary expenses incurred or paid in connection with the business are generally deductible. Such deductions include, among others, cost of sales, salaries and wages, employee welfare expenses, repair and maintenance costs, rent and lease payments, advertising expenses, interest expenses and bad debts, largely consistent with the GAAP. Deductions are not available for not-for-business expenditures, excessive or unreasonable expenses, and certain taxes, penalties and fines. Expenses used to generate illegal income are not deductible if the disbursement itself is illegal or contrary to public policy.

Korean-sourced business profits derived by non-residents are also taxable on a net income basis to the extent that they are attributable to a PE in Korea.

3.3 Passive Income

For non-residents, passive income is subject to withholding tax at source, unless it is attributable to the Korean PE of the taxpayer. The withholding tax rate under the CITA and the IITA is 22% (including local income tax), subject to exemption or reduction by an applicable treaty.

For residents, financial income (interests and dividends) of KRW20 million or less is not aggregated to the global income basket and separately taxed by withholding at the rate of 15.4% (including local income tax), and any excess will be added to the global income basket subject to the graduated tax rates.

3.4 Capital Gains

Taxation of capital gains varies depending on the type of asset and the status of the taxpayer.

For resident individuals, asset-specific rules apply. First, see **3.1 Income From Immovable Property** for capital gains from real property. Second, gains from ships or aircraft and shares in a "real property" company are taxed in a similar manner to real property. Third, gains from listed corporate shares are not taxable for small investors whose shares in a company are less than KRW50 million and less than 1% of the outstanding shares in the company. Otherwise, capital gains from shares are taxable. Tax rates range from 10% to 30%, depending on the size of the company, place of incorporation (domestic or foreign) of the company, listing of the shares, size of investment, holding period and other factors. Income or gains passed through collective investment vehicles are not considered capital gains and instead are added to the global basket. Temporary measures have recently been introduced to encourage investment in the Korean stock market, such that capital gains realised from investment in an overseas market will be wholly or partially exempted to the extent that the proceeds are reinvested in Korea. Fourth, capital gains on bonds (other than the accrued interest portion) are not taxable.

For domestic corporations, the CITA taxes capital gains as a part of the annual ordinary income, yet super-imposes a surtax on the capital gains from houses or not-for-business lands.

For non-residents, capital gains derived from real property in Korea are taxed in the same manner as for residents. See **3.1 Income From Immovable Property**. Capital gains from ships or aircraft and shares in a real-property company are taxed similarly under the IITA or the CITA, but treaty protections may apply depending on the specific language of the applicable treaty. Capital gains from other corporate shares may also avoid Korean taxes under some OECD-type treaties.

3.5 Employment Income

Employment income, earned by a resident or received from Korean sources by a non-resident, is subject to progressive income tax rates ranging from 6% to 45%, plus a 10% local income surtax. The taxes are collected at the source in the form of withholding tax, and an employee does not have to file a tax return

unless they earn other types of income enough to necessitate a tax return.

Foreign employees may elect to pay a flat tax rate (19% currently) on employment income for a period of up to 20 years, under an ostensibly time-limited rule which has so far been continuously extended over the past 20 years.

3.6 Other Income

No specific types of income other than those listed above are subject to special taxation rules in Korea.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As of January 2026, Korea has not formally enacted legislation to implement Amount B of Pillar One into its domestic tax law. While Korea has been a frontrunner in adopting Pillar Two (the Global Minimum Tax), its approach to Amount B has been subject to active monitoring and cautious alignment with the OECD's evolving implementation framework.

Korea is currently in a "wait and see" phase with respect to the formal adoption of Amount B. The Ministry of Economy and Finance has indicated its intention to remain aligned with the OECD/G20 Inclusive Framework; however, Amount B was not included in the 2025 or 2026 Tax Law Amendment Proposals. If and when Korea adopts Amount B, it is expected to closely follow the OECD's "Simplified and Streamlined Approach", with limited local customisation.

4.2 Pillar One – Amount A

Like many other jurisdictions, Korea has not yet moved to ratify or implement Amount A domestically because the global consensus remains stalled. Korea is closely watching the status of implementation of other jurisdictions. Since Amount A requires a "critical mass" of signatures to become effective, Korea is unlikely to take unilateral legislative action until it is certain the global regime will actually launch.

4.3 Pillar Two

Korea was an early adopter of Pillar Two, enacting it into law in 2024 and introducing a Qualified Domestic Minimum Top-up Tax (QDMTT) effective from 1 January 2026.

4.4 Specific Features or Deviations of Pillar Two

As of 2026, Korea's global minimum tax rules have been designed to align closely with the OECD Model Rules. Unlike some jurisdictions that directly refer to the OECD Model Rules, Korea redrafted the rules in its own legal language. As a result, the rules have been integrated into Korean tax law.

4.5 Digital Services Tax

Korea does not have a specific tax on digital products in income taxation. The VAT Act, however, has expanded taxability by imposing the tax on local agents and by expanding the scope of reverse-charge VAT.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax fraud or tax evasion is a crime punishable under Punishment of Tax Offenses Act (PTOA), while tax avoidance short of being a crime is subject to administrative penalties and interest charges only. In a notable trend, the National Tax Service (NTS) is increasingly co-ordinating with prosecutors to pursue criminal charges, particularly in cases of sophisticated tax evasion.

Tax fraud or tax evasion involves active and deceptive conduct to disable or seriously hinder tax assessment or collection. The indicators of "fraud or improper means" under Article 3 of the PTOA include maintaining multiple or false sets of accounting records, fabricating or using false tax invoices or contracts, intentionally destroying or concealing accounting books, hiding assets or income through nominee arrangements, and manipulating electronic tax systems or enterprise resource planning software. The penalties are imprisonment of up to three years and fines of up to three times the tax evaded. Other tax crimes include, among others, the concealment of assets to

evade enforcement, the issuance of fraudulent tax invoices and the intentional failure to fulfil withholding tax obligations. Courts have held that the mere failure to file a return or the under-reporting of income does not, in itself, constitute a tax crime; rather, such instances are typically treated as administrative infractions subject to administrative penalties. The under-reporting penalty could amount to 40% in "unjust" cases, with potential criminal liability if fraudulent elements are present.

In the absence of fraud, efforts to exploit legal loopholes for the avoidance of tax would be subject to administrative penalties if they fail to pass the NTS audit and court litigation. The National Tax Basic Act provides for a general anti-avoidance rule under the title of substantive form. The IITA and the CITA also provide for more specific anti-avoidance rules under the title of "denial of improper acts and calculations". These rules apply to international transactions as well, and the courts have ruled that they are integral to the interpretation and application of the tax treaties Korea has entered into.

Under the substance-over-form principle, transactions structured primarily to secure tax advantages without a bona fide business purpose may be disregarded. In such cases, the tax consequences are determined by the underlying economic reality rather than the nominal contract or legal form. Common indicators of abusive arrangements include roundabout transactions involving multiple steps or third-party intermediaries – often linked to tax-favoured jurisdictions – intended to disguise the true nature of a deal or improperly claim treaty benefits; conduit companies that lack employees, physical presence or decision-making authority, the beneficial owner potentially being the parent or another entity; hybrid mismatch arrangements that exploit differences in tax characterisation between jurisdictions to achieve double non-taxation; and transfer pricing practices that significantly deviate from the arm's length standard in related-party transactions.

5.2 Anti-Avoidance Mechanisms

Korea relies on a robust legal and penalty framework. Enforcement has become increasingly stringent for high-value transactions, where the scope of inquiry often extends beyond administrative audits into formal criminal investigations. In particular, if the amount of alleged evasion exceeds KRW500 million in a given year, the violation may result in incarceration for a period of three years up to lifetime pursuant to the Act on the Aggravated Punishment of Specific Crimes (AAPSC). Additionally, a fine equivalent to two to five times the amount of tax evaded may also be imposed. In practice, full payment of the evaded taxes is often a prerequisite for a court to consider probation or any reduction in sentencing. Since September 2025, a new enforcement penalty fine regime has been introduced, allowing authorities to impose daily fines on companies, particularly multinational enterprises, that refuse to submit requested documents during a tax audit. These fines are calculated as a percentage of the company's average daily revenue and continue to accrue until compliance is achieved.

The NTS deploys intensive audit and investigative mechanisms. Risk-based audit selection leverages third-party reporting, financial institution data, customs records and real-time VAT information to identify anomalies and compliance risks. Specialised investigation units focus on large corporate groups, multinational enterprises and high net worth individuals. Where fraud is suspected, the NTS is empowered to initiate compulsory investigations. This authority includes the power to conduct "dawn raids", seize physical and digital records, perform deep-dive forensic analyses of Enterprise Resource Planning systems, and refer cases to the prosecution for criminal indictment. At the same time, co-operative compliance tools – such as advance rulings and advance pricing agreements (APAs) – are used to mitigate tax risks and resolve issues before they escalate into disputes.

Cross-border information exchange and transparency mechanisms play a central role in Korea's enforcement strategy. Korea actively participates in OECD and G20 initiatives, including the Common Reporting Standard (CRS) for automatic exchange of financial account information, country-by-country (CbC) reporting and the spontaneous exchange of tax rulings. Collectively, these measures significantly reduce opportunities to conceal offshore income, use conduit entities or exploit treaty mismatches.

5.3 Blacklists and Non-Cooperative Jurisdictions

Following the March 2010 amendment to the LCITA, Korea abolished its formal system for designating non-cooperative tax havens. As of January 2026, the tax authorities continue to operate without maintaining an official list of non-cooperative or high-risk jurisdictions.

5.4 Reporting Obligations and Disclosure Regimes

Korea maintains a robust and increasingly digitalised reporting framework aimed at enhancing transparency and equipping the NTS with the data necessary to detect aggressive tax planning and tax evasion. As of January 2026, key reporting obligations span cross-border transactions, asset disclosures, and targeted compliance requirements for entities with limited or non-business presence in Korea, supported by financial intelligence and whistleblower mechanisms.

In the area of cross-border and transactional reporting, Korea requires extensive disclosures to prevent offshore tax evasion and so-called "roundabout" transactions. Corporations engaged in international related-party transactions must file a Statement of International Inter-company Transactions, a Summary Income Statement of a Foreign Related Party and a Statement of Transfer Pricing Method within six months from the fiscal year-end. Multinational enterprise groups with substantial cross-border activity – generally those exceeding KRW100 billion in annual turnover and KRW10 billion in related-party transactions – are required to submit a BEPS Master File and Local File within 12 months from fiscal year-end. In addition, ultra-large multinational groups with consolidated global revenues exceeding EUR750 million must file a CbC report, which Korea automatically exchanges with other participating tax jurisdictions under international information-sharing agreements.

Asset disclosure obligations have also been significantly expanded to capture opaque ownership structures and emerging asset classes. Korean residents and domestic companies must report all overseas financial accounts, including bank accounts, securities accounts, and virtual asset or cryptocurrency accounts, if the aggregate balance exceeds KRW500 million at the end of any month during the reporting year. Additionally, residents holding foreign real estate must submit an Overseas Real Estate Acquisition and Management Report to the tax authorities, and residents who have made overseas direct investments are obligated to submit information regarding their overseas subsidiaries. From January 2026, new overseas trust reporting requirements will take effect, obligating individuals and entities holding assets through foreign trusts to disclose detailed information to the NTS – an initiative aimed at closing what authorities view as the last major channel for offshore concealment. In addition, residents holding foreign real estate are required to file a Statement of Acquisition and Management of Overseas Real Estate with the tax authorities.

5.5 Role of Tax Authorities and Enforcement Measures

The NTS is vested with extensive and graduated investigative powers, ranging from routine administrative inquiries to criminal-level tax offence investigations. As of January 2026, enforcement priorities have increasingly focused on offshore asset concealment and income generated through digital platforms.

The NTS possesses broad authority to access records and compel the production of information. Taxpayers are legally required to maintain books and supporting documentation for a minimum of five years, and the NTS may request such records at any stage of an audit. In cases involving suspected tax evasion, the NTS has direct access to information held by the Korea Financial Intelligence Unit (KoFIU), including reports on suspicious transactions and large-value cash transactions exceeding KRW10 million, without the need for a separate warrant. In addition, the NTS may conduct third-party inquiries by requesting records and explanations from a taxpayer's customers, suppliers and financial institutions in order to verify the accuracy and completeness of reported transactions.

The NTS differentiates between levels of tax audits based on the perceived risk and severity of non-compliance. Regular (general) audits are typically conducted on a four- to five-year cycle for large corporations and are generally preceded by a 20-day advance notice. By contrast, special or extraordinary audits are

irregular and often unannounced, and are triggered by concrete indications of tax evasion, the existence of slush funds, or intentionally abusive reporting practices. High-profile or technically complex cases are frequently assigned to specialised investigation units, including the Seoul Regional Tax Office's Investigation Bureau 4, which is widely regarded as the NTS's most aggressive enforcement arm.

While many audits are conducted as desk reviews based on submitted documentation, the NTS makes frequent use of field audits where closer scrutiny is warranted. During a field audit, tax officials visit the taxpayer's business premises to examine original records, interview employees and directly observe business operations. Where there is a substantial risk that evidence may be concealed, destroyed or altered, the NTS is authorised to dispense with the standard advance notice requirement and initiate the audit through an unannounced on-site visit or "dawn raid".

When a matter escalates from an administrative audit to a formal tax offence investigation, the NTS's powers expand significantly. Pursuant to the PTOA, tax authorities may conduct searches and seizures of a suspect's residence or business premises based on a judicial warrant. In exigent circumstances – such as when an offence is ongoing or evidence faces an imminent risk of destruction – the NTS may conduct a warrantless search, provided that judicial approval is obtained within 48 hours thereafter. During such investigations, authorities may seize computers, servers, hard drives, accounting records and physical safes, and may deploy technical and decryption specialists to access encrypted or otherwise secured digital evidence.

6. Penalties and Sanctions

6.1 Tax Penalties

Cross-border transactions are governed by a multi-layered legal framework that necessitates a clear distinction between tax-related penalties and transactional or regulatory sanctions. In relation to cross-border tax issues, compliance is primarily overseen by the NTS under the LCITA. This Act governs critical areas such as transfer pricing, the Pillar Two Global Minimum Tax, and reporting requirements for foreign-related parties. Failure to comply with these mandates, such as the submission of mandatory Local or Master Files, can result in substantial fines of up to KRW100 million, while Pillar Two (QDMTT) violations allow the NTS to directly determine tax liabilities and impose additional surcharges for non-filing or evasion.

Beyond tax concerns, the movement of capital and goods falls under the jurisdiction of the Korea Customs Service and the Financial Supervisory Service. The Foreign Exchange Transactions Act regulates the flow of money across borders; while simple procedural failures in reporting capital transactions may lead to administrative fines, serious criminal violations – such as unregistered money transfers – can result in up to three years of imprisonment or fines reaching KRW300 million. Furthermore, the Customs Act governs the physical movement of goods and their valuation, imposing the strictest sanctions for smuggling or false export declarations, which can lead to up to five years of imprisonment or fines equivalent to the total value of the goods involved.

6.2 Criminal Penalties

In Korea, criminal penalties for tax fraud and evasion are primarily governed by the PTOA, with significantly harsher sanctions applied to large-scale evasion under the AAPSC. As of 2026, these penalties are strictly structured based on the amount of tax evaded and the presence of fraudulent intent. Under the general provisions of the PTOA, individuals or corporations found to have evaded taxes through "fraud or other improper means" – such as secret accounting books, destruction of records, or the fabrication of invoices – face up to three years of imprisonment or a fine of up to triple the evaded amount. The use of a tax invoice without supplying goods or services may be punishable by imprisonment for up to three years or a fine equivalent to up to three times the amount of VAT.

For more severe cases, the AAPSC removes the option of a simple fine and mandates prison time. When the evaded amount is between KRW500 million and KRW1 billion, the law requires a fixed prison term of at least three years, alongside a fine of two to five times the evaded amount. If the evasion exceeds KRW1 billion, the penalty escalates to five years to

life imprisonment. Crucially, because Korean law generally restricts probation or suspended sentences to prison terms of three years or less, those convicted of evading over KRW1 billion may face mandatory jail time. Furthermore, the authorities have placed a heavy focus on the use of fictitious tax invoices. While standard penalties include up to three years of imprisonment, transactions exceeding KRW3 billion may lead to much longer prison terms.

These criminal risks are particularly pertinent to cross-border transactions and the management of representative offices. For fraudulent offshore or cross-border transactions, the NTS operates within an extended assessment window of 15 years, significantly longer than the ten-year period for domestic fraud. Additionally, the criminal statute of limitations for tax evasion typically ranges from seven to 20 years, depending on the severity of the specific offence, ensuring a long period of potential legal exposure for non-compliant entities.

6.3 Interaction Between Tax and Criminal Procedures

The transition of a tax case from an administrative audit to a criminal prosecution is governed by a formal and structured process primarily defined by the PTOA. Central to this framework is the Disposition of Tax Offenses, a two-tier referral mechanism where the NTS first allows for an "administrative settlement" phase. Under this phase, if the taxpayer pays the evaded tax along with a specific penalty known as the "fine equivalent amount", the case is settled and cannot be prosecuted. However, a mandatory criminal referral to the Public Prosecutor's Office is triggered if the taxpayer fails to pay by the deadline or if the NTS determines the offence is too severe – due to the scale of evasion or habitual fraud – to permit an administrative settlement.

To ensure objectivity before a case reaches the judicial system, large-scale evasion cases are vetted by Tax Offense Investigation Committees located within Regional Tax Offices. Composed of both internal NTS officials and external experts such as lawyers and professors, these committees act as a quality control mechanism to ensure evidence meets the rigorous burden of proof required in criminal court.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

In Korea, administrative co-operation in tax matters – encompassing the exchange of information and mutual assistance in collection – is structured through domestic legislation and international treaties. The primary cornerstone of this framework is the LCITA, which establishes the fundamental rules for co-ordination between the NTS and foreign states. Under Article 4 of the LCITA, this Act and applicable tax treaties explicitly take precedence over general domestic tax laws, such as the CITA, in matters of international transaction. A key provision of the LCITA is the legal basis for MAPs, which empowers the NTS to consult with foreign competent authorities to resolve interpretation disputes or instances of double taxation.

Supporting this domestic foundation is a robust network of multilateral and bilateral treaties that facilitate the actual flow of taxpayer data. Korea is a signatory to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, an OECD/Council of Europe initiative that provides the legal "pipeline" for the Exchange of Information on Request (EOIR) and the Automatic Exchange of Information (AEOI) under the CRS. This is complemented by over 95 bilateral tax treaties, which typically include specific exchange articles modelled after the OECD standards. For jurisdictions where a tax treaty is absent, Korea utilises Tax Information Exchange Agreements (TIEAs) to ensure transparency.

Finally, the technical mechanics of this co-operation are defined by Presidential Decrees and Enforcement Rules associated with the LCITA. These decrees mandate that Korean financial institutions report data on non-resident accounts to the NTS for global sharing. A significant update as of 1 January 2026 involves the expansion of these laws to include the automatic reciprocal exchange of information regarding crypto-asset transactions with contracting states, reflecting Korea's commitment to capturing digital economy shifts within its administrative reach.

7.2 Exchange of Information Clauses in Tax Agreements

Korea is a highly active participant in the global network of tax information exchange, utilising a sophisticated framework to identify offshore tax evasion and ensure compliance. As of 2026, the NTS leverages four primary methods of exchange, primarily grounded in the LCITA and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The most systematic of these is the AEOI, which involves the annual transmission of predefined data sets without a specific prior request. This includes the CRS covering financial account information with over 120 jurisdictions, reciprocal FATCA reporting with the United States, and CbC reporting for large multinationals. Notably, as of 1 January 2026, Korea has expanded this reach by implementing the Crypto-Asset Reporting Framework to automatically exchange data on virtual asset transactions.

7.3 Other Forms of International Tax Collaboration

Korea is not yet a participant in the OECD's International Compliance Assurance Programme.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Korea maintains a robust MAP programme, serving as a non-judicial administrative process designed to resolve tax disputes stemming from the interpretation or application of tax treaties. This programme is particularly critical for addressing cases of double taxation or transfer pricing adjustments. As of 2026, the MAP framework is highly active, with the NTS issuing updated annual guidelines to further streamline the resolution of complex international tax conflicts.

The legal authority for the MAP programme in Korea is anchored in two primary sources. First, the LCITA serves as the foundational domestic legislation, specifically within Articles 42 to 46 and their corresponding Enforcement Decrees, which codify the technical procedures for commencing, conducting and implementing MAP outcomes. Second, Korea's extensive network of over 95 bilateral double taxation agreements provides the international legal basis. These treaties typically incorporate provisions modelled after Article 25 of the OECD Model Tax Convention, authorising the "Competent Authorities" of both states – usually the Ministry of Economy and Finance or the NTS – to communicate directly to resolve treaty-related grievances.

8.2 Application Deadlines

The deadline to submit a MAP request is typically three years from the date when the taxpayer becomes aware of the tax assessment. This date generally refers to the day on which the taxpayer receives a tax assessment notice.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is not universally available for all tax matters, but it has increasingly become a standard feature in many of the country's modern and recently renegotiated tax treaties. As of 2026, the availability of this mechanism is governed by three distinct legal frameworks, starting with the MLI. While Korea has ratified the MLI, it notably opted out of the mandatory binding arbitration provisions in Part VI. Consequently, Korea does not automatically apply mandatory arbitration to its vast network of over 95 treaties through the MLI, instead maintaining the traditional "Mutual Agreement" standard where jurisdictions are required to endeavour to reach a resolution without being strictly forced to do so by an external arbiter.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Korea maintains a highly active and well-established APA programme, which serves as a primary tool for multinational enterprises to manage transfer pricing risks and secure up-front tax certainty. The programme is administered by the NTS and functions through a framework grounded in both domestic legislation and international treaties. The foundational domestic statute is the LCITA, specifically Articles 14 and 15, which authorise taxpayers to seek prior approval for their chosen transfer pricing methodologies. This is supported by the Enforcement Decree of the LCITA, which outlines the technical requirements

for applications, necessary documentation, and the specific evaluation criteria utilised by the NTS.

9.2 Other Mechanisms

Beyond the formal MAP and APA procedures, Korea provides several "collaborative" and "pre-emptive" instruments to help taxpayers manage international tax risks and secure up-front certainty. These programmes are designed to foster transparency and reduce the administrative burden on both the NTS and multinational enterprises.

The Tax Ruling System offers two distinct types of formal interpretations to resolve legal ambiguities. Advance Rulings are particularly powerful as they are legally binding on the tax authorities; a taxpayer can request a ruling on a specific planned transaction, and the NTS is required to follow it unless the actual facts differ materially from the submission. In contrast, General Rulings (or Tax Interpretations) issued by the NTS or the Ministry of Economy and Finance are non-binding. However, they are highly respected by tax auditors and often serve as a defence mechanism during audits to demonstrate that a taxpayer acted in "good faith" based on official guidance.

Trends and Developments

Contributed by:
Kyu Dong Kim and Yong Whan Choi
Yulchon LLC

Yulchon LLC is a full-service international law firm headquartered in Seoul. It employs more than 820 professionals, including 82 who are licensed in jurisdictions outside of Korea. Yulchon advises on a wide range of specialised practice areas, including corporate and finance, antitrust, tax, real estate and construction, dispute resolution, intellectual property, and labour and employment. The firm's perspective is international and its reach is global.

Authors



Kyu Dong Kim is co-head of the International Tax team at Yulchon LLC and has more than 26 years of experience in tax advisory services. Before joining Yulchon, he worked at PricewaterhouseCoopers in London from 2005 to 2008, and at Samil PricewaterhouseCoopers from 2008 to 2011. Kyu Dong has extensive experience in cross-border tax matters, with a particular focus on advising ICT clients and structuring inbound fund investments into Korea, as well as outbound investments by Korean companies. He is an active member of the Korean branch of the International Fiscal Association and serves on two investment committees of the National Pension Fund.



Yong Whan Choi is co-head of the International Tax team at Yulchon LLC. He has more than 17 years of tax experience, with a primary focus on transfer pricing, permanent establishment, beneficial ownership and royalty matters. He regularly advises ICT, global semiconductor and automotive clients on various tax issues. Before joining Yulchon, Yong Whan served for three years as a government attorney, representing the Korea National Tax Service in tax litigation.

Yulchon LLC

Parnas Tower
38th Floor
521 Teheran-ro
Gangnam-gu
Seoul 06164
Republic of Korea

Tel: +82 2 528 5200
Fax: +82 2 528 5228
Email: mail@yulchon.com
Web: www.yulchon.com

1. Korean Supreme Court Changes 30-Year Precedent on Taxation of Royalties for Foreign-Registered Patents

On 18 September 2025, the Korean Supreme Court issued an *en banc* decision in Case No. 2021Du59908 (the "En Banc Decision"), changing its long-standing position on the taxation of royalties derived from patents registered outside Korea but not registered in Korea ("foreign-registered patents", commonly referred to as "unregistered patents").

In its prior decisions (for example, Supreme Court Decisions 91Nu6887 dated 12 May 1992, 2005Du8641 dated 7 September 2007, 2012Du18356 dated 27 November 2014, 2013Du9670 dated 11 December 2014, 2016Du42883 dated 27 December 2018, 2018Du36592 dated 10 February 2022, 2019Du50946 dated 10 February 2022 and 2019Du47100 dated 24 February 2022), the Supreme Court consistently held that the "use" of a patent right for purposes of Articles 6 (3) and 14 (4) of the Korea–US tax treaty means "use within the country in which the patent right is effective", and therefore, the use in Korea of a patent not registered in Korea cannot be recognised. However, in the En Banc Decision, the Supreme Court overturned this legal principle, holding that for foreign-registered patents, the determination of whether a patent is used in Korea should be based not on whether the patent rights are exercised in Korea under the "territoriality principle", but on whether the "patented technology" is effectively used in Korea for activities such as manufacturing and sales.

In many tax disputes involving patent royalties paid by Korean companies to US companies, the key question has been how to determine what portion of the royalties constitutes "Korean-source income" subject to taxation in Korea; in other words, how to calculate the portion attributable to the use of the patent in Korea (ie, royalties arising from sources within Korea) versus the portion attributable to its use outside Korea. The Supreme Court's En Banc Decision directly addresses and clarifies this question.

Since the Supreme Court rendered its decision in Case No. 91Nu6887 on 12 May 1992, the Supreme Court has, for the past 33 years, consistently held based on the "territoriality principle" that:

"patent rights are effective only within the territory of the country in which the relevant patent is registered. Patent infringement cannot occur in countries other than the country in which the relevant patent is registered, and accordingly, the notion of using or paying consideration for the use of, or the rights to use, patents cannot exist in countries other than the country in which the relevant patent is registered. Thus, where a US corporation registers a particular patent outside of Korea but not in Korea, income derived by the US corporation in relation to such patent cannot be treated as consideration received for the use of, or the rights to use, the patent, and therefore, cannot be viewed as Korean-source income."

Based on this legal principle established by Supreme Court precedents, when a US resident without a permanent establishment in Korea receives patent royalties, the courts have ruled that only the portion attributable to patents registered in Korea should be treated as Korean-source income and taxable in Korea.

However, the En Banc Decision directly overturned the previous Supreme Court rulings. The Supreme Court in the En Banc Decision ultimately held that, for purposes of the Korea–US tax treaty, "use of a patent" refers not to the use of the patent right itself, but to the effective use of the patented technology in activities such as manufacturing and sales. The Supreme Court reversed the lower court's decision and remanded the case to the Suwon High Court on the basis that "the lower court determined that the royalties in question were not Korean-source income solely based on where the patents are registered, without examining whether the patented technologies were effectively used in manufacturing or sales in Korea".

In light of this En Banc Decision, significant disputes are expected going forward. Future cases concerning whether patent royalties constitute Korean-source income are likely to focus on two key issues: (i) whether the "patented technologies" specified in the licence agreement fall within the scope of royalty payments and are effectively used in activities such as manufacturing and sales in Korea, and (ii) if so, what portion of the royalties received by the patent holder constitutes consideration for such use in Korea, and how that portion should be apportioned and calculated.

Companies with existing patent licence agreements should review whether the royalty payment provisions – particularly, the scope of royalty payments – are clearly defined. Where ambiguity exists, the parties should consider proactively securing documentation that evidences their true intent. If any portion of the royalties was paid for the use of patented technology in Korea, it is also important to prepare and maintain records that substantiate the scope of such payments.

Companies should carefully consider the implications of the En Banc Decision when entering into patent licence agreements in the future. It is recommended to clearly define the scope of royalty payments and to include provisions that explicitly require mutual co-operation in the event of tax dispute proceedings. While many multinational enterprises have historically resolved patent royalty disputes through domestic litigation, they may now need to explore alternative resolution mechanisms, such as the Mutual Agreement Procedure, to achieve more efficient and effective outcomes.

2. Recent Developments in Korea's Domestic Implementation of the OECD Pillar Two Global Anti-Base Erosion (GloBE) Rules

Following the United States' proposal for a "side-by-side" approach and subsequent discussions in the Inclusive Framework, the OECD released a Side-by-Side (SbS) Package in January 2026. The SbS Package is intended to reduce friction between the OECD's GloBE architecture and the United States' existing minimum-tax framework by providing a structured pathway to reconcile the two regimes.

At a high level, the SbS Package introduces the concept of a "Qualified SbS Regime". Where a multinational enterprise (MNE) group's ultimate parent entity (UPE) jurisdiction operates such a regime, the package provides a mechanism that, in effect, switches off top-up tax under the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR) for the group's entities by treating the relevant top-up tax amount as zero for IIR/UTPR purposes.

The package describes a Qualified SbS Regime as a composite of three building blocks. First, the UPE jurisdiction must operate a "Qualified Worldwide Tax System", designed to ensure that low-taxed foreign profits are brought into scope through a parent-level minimum-tax style inclusion. Second, it must operate a "Qualified Domestic Tax System", intended to secure a minimum-tax outcome on domestic profits. Third, it must provide a qualifying foreign tax credit (FTC) mechanism to manage potential double taxation that could arise where jurisdictions apply Qualified Domestic Minimum Top-up Tax (QDMTT) regimes.

Under the package's framing, the United States is treated as meeting the Qualified Worldwide Tax System requirement through a Net CFC Tested Income (NCTI) regime, and the Qualified Domestic Tax System requirement through the Corporate Alternative Minimum Tax. Further, the US Internal Revenue Service administrative interpretations allow QDMTTs to be treated as creditable for FTC purposes, and the OECD's "central record" now reflects this position for the United States accordingly. For Korean subsidiaries and branches of US-headquartered groups, this framework is expected to reduce the practical risk of incremental cash tax liabilities and compliance burdens arising from IIR/UTPR outcomes.

The SbS Package does not, however, function as a blanket shield against QDMTTs. It does not prevent jurisdictions from applying their own QDMTTs, which are designed to apply first under the Pillar Two GloBE rules. The sequencing remains critical: (i) QDMTT, (ii) IIR and (iii) UTPR. From a practical perspective, the SbS Safe Harbour effectively neutralises (ii) and (iii), while leaving (i) intact. For Korea, that distinction becomes relevant from 2026 onward, as Korea's QDMTT will apply and Korea can collect top-up tax on low-taxed Korean profits regardless of whether the group is US- headquartered and otherwise insulated from IIR/UTPR top-up tax.

Against this backdrop, the practical focus for US-headquartered groups with Korean operations may shift towards ensuring that Korean QDMTT calculations are robust, well supported by documentation, and defensible in the event of audit. For groups headquartered outside the United States, a separate strategic consideration is whether other UPE jurisdictions may seek to adopt domestic regimes that could qualify as a "Qualified SbS Regime". While Korea's statutory corporate

tax rates exceed the 15% minimum and may support the view that the "Qualified Domestic Tax System" condition could be met, the "Qualified Worldwide Tax System" requirement is conceptually different. It concerns how comprehensively foreign profits are taxed at the parent-jurisdiction level. In that context, elements such as substantive activity exceptions in controlled foreign company (CFC) rules may attract closer scrutiny, as they may be viewed as limiting the degree of "comprehensiveness" that the SbS framework appears to ensure. Whether Korea would consider refinements to these rules for SbS purposes remains a policy variable that both inbound and outbound groups should monitor closely, particularly where the location of the UPE could become determinative of IIR/UTPR exposure across multiple jurisdictions.

Separately from the SbS Safe Harbour, the SbS Package also includes a safe harbour for certain "Substance-based Tax Incentives" (SBTIs). This element may be important for Korean operations because Korea relies on targeted tax credits and allowances to encourage capital investment, strategic industry development and R&D activity. The SBTI concept is designed to cover incentives linked to production or expenditure, rather than relief that is purely profit-based. Examples include production tax credits available under the United States' Inflation Reduction Act and certain Korean investment tax credits.

Mechanically, the SBTI Safe Harbour is aimed at eliminating the incremental top-up tax that is attributable to the incentive. In simplified terms, it compares (i) the top-up tax calculated without the SBTI treatment and (ii) the top-up tax calculated with the SBTI treatment, and treats the incremental difference as zero. The SBTI treatment operates through an upward adjustment to adjusted covered taxes (ie, the numerator), rather than through a reduction or a denominator-side adjustment. Even with this relatively favourable design, however, the benefit is not unlimited. The package contemplates a cap linked to a percentage of eligible payroll costs and eligible tangible assets, conceptually mirroring the substance-based income exclusion rule. Therefore, MNE groups should not assume that all incentive-driven top-up tax will be eliminated; while the benefit can be meaningful, it will remain bounded by the entity's real economic substance.

Korea already maintains a range of expenditure-linked incentives, most notably the investment tax credits and R&D-related tax credits, which are designed to reward real-economy activity rather than reduce tax on residual profits. In addition, policy discussions suggesting that the Korean Ministry of Economy and Finance may actively consider introducing Korea-style production-based tax credits for strategic industries indicate that additional incentives could, over time, be assessed through the OECD's SBTI lens. Where a Korean tax credit is structured to meet the SBTI criteria, Korea's Global Minimum Tax and/or QDMTT calculations may ultimately incorporate the safe harbour's special treatment.

This SBTI framework can also be relevant for Korean-headquartered groups with foreign subsidiaries. For example, where a foreign subsidiary is located in a jurisdiction that has not introduced a QDMTT but provides significant tax incentives such that the subsidiary's effective tax rate falls below 15%, the default outcome under the Pillar Two ordering rules would generally be top-up taxation at the level of the Korean parent under the IIR. If, however, the relevant incentive can be characterised as an SBTI and the safe harbour treatment is available, the incremental IIR top-up tax attributable to that incentive may be reduced. This could potentially change both the cash-tax outcome and the way MNE groups approach the design and substantiation of incentives in their Pillar Two governance frameworks.

SPAIN

Law and Practice

Contributed by:
Cristina Alba and José María Rodríguez Hernández
act legal



Contents

1. Sources and Principles p.428
1.1 Domestic Sources of International Tax Law p.428
1.2 Hierarchy of Sources p.428
1.3 OECD Model/United Nations Influence on Treaty Practice p.429
1.4 Multilateral Instrument p.429

2. Territoriality, Residence and Permanent Establishment p.430
2.1 General Principle of Territorial Taxation p.430
2.2 Tax Residence of Individuals p.430
2.3 Taxation of Resident Individuals p.430
2.4 Taxation of Non-Resident Individuals p.431
2.5 Tax Residence of Legal Entities p.431
2.6 Definition of Permanent Establishment p.432

3. Taxation of Cross-Border Income p.432
3.1 Income From Immovable Property p.432
3.2 Business Profits p.433
3.3 Passive Income p.433
3.4 Capital Gains p.434
3.5 Employment Income p.435
3.6 Other Income p.435

4. OECD/G20 Global Tax Reform p.435
4.1 Pillar One – Amount B p.435
4.2 Pillar One – Amount A p.436
4.3 Pillar Two p.436
4.4 Specific Features or Deviations of Pillar Two p.436
4.5 Digital Services Tax p.436

5. Anti-Avoidance and Anti-Evasion Measures p.437
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.437
5.2 Anti-Avoidance Mechanisms p.437
5.3 Blacklists and Non-Cooperative Jurisdictions p.437
5.4 Reporting Obligations and Disclosure Regimes p.438
5.5 Role of Tax Authorities and Enforcement Measures p.438

6. Penalties and Sanctions p.438
6.1 Tax Penalties p.438
6.2 Criminal Penalties p.439
6.3 Interaction Between Tax and Criminal Procedures p.439

7. Administrative Co-Operation p.439
7.1 Legal Framework for Administrative Co-Operation p.439
7.2 Exchange of Information Clauses in Tax Agreements p.440
7.3 Other Forms of International Tax Collaboration p.440

8. Mutual Agreement Procedures and Arbitration p.440
8.1 Availability and Legal Basis p.440
8.2 Application Deadlines p.440
8.3 Mandatory Binding Arbitration p.441

9. Dispute Prevention p.441
9.1 Advance Pricing Agreements p.441
9.2 Other Mechanisms p.441

act legal is an international law firm established to provide cross-border advice in today's complex and fast-moving markets. With offices in 19 jurisdictions across Europe and teams working in an integrated manner, the firm combines strong local expertise with a genuinely international outlook, assembling tailored, partner-led teams that understand clients' commercial priorities. The tax team in Spain comprises five members, including two partners, one senior associate and two associates. Other key office locations include Frankfurt, Amsterdam, Paris and Milan. The team advises corporate taxpayers, family offices and high net worth individuals on transactions, disputes and day-to-day matters. The firm's culture emphasises collaboration, accessibility and efficiency, offering the quality and experience associated with large global firms while maintaining the agility and close client relationships of a boutique practice.

Authors



Cristina Alba is a tax lawyer with more than 20 years of experience in complex domestic and cross-border tax matters. Before joining act legal, she practised at leading firms including Roca Junyent, Baker McKenzie and EY Abogados. Cristina regularly advises international funds on investment and divestment processes in Spain and has participated in significant multinational reorganisations with multi-jurisdictional impact. Her work also includes private equity transactions, tax due diligence and M&A, as well as succession planning for family businesses and representation of Spanish companies in tax audits and Mutual Agreement Procedures.



José María Rodríguez Hernández is a tax lawyer and has been based in act legal's Madrid office since 2020. He previously worked at several Spanish law firms and advisory practices, gaining solid experience in domestic and international tax matters. His practice focuses on direct and indirect taxation for corporate clients, including business groups in the real estate, technology and start-up sectors, notably e-commerce and blockchain-based businesses. He has extensive M&A experience and advises family-owned companies and high net worth individuals on tax structuring, transactions and ongoing compliance.

act legal

Calle Ayala 11, 3 planta
28001
Madrid
Spain

Tel: +34 91 577 98 19
Email: despacho@actlegal-spain.com
Web: www.actlegal.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Spain's foreign tax system is based on a defined hierarchy of legal sources, such as constitutional principles, local laws, EU law, and a network of treaties.

The Spanish Constitution sets out the main characteristics of the tax system, which include principles such as legality, equality, economic ability, progressivity, and the prohibition of confiscatory taxation.

The Constitution also legislates on how international treaties can become part of domestic law. Once concluded, ratified and officially published in the Official State Gazette (BOE), treaties are incorporated into the internal legal framework without necessitating further implementing legislation.

The General Tax Law (GTL) establishes the main rules for the interpretation, administration, and enforcement of tax-related issues. Administrative interpretation holds significant importance in Spain, with two clear examples.

- Binding rulings issued by the Directorate General of Taxes (DGT): in general, rulings are binding not only on the taxpayer who requested them, but also on other taxpayers if there is identity between the facts and circumstances of the taxpayer concerned and those addressed in the ruling. As such, they are frequently used as guidance to align criteria with the Tax Administration.
- Rulings of the Central Economic-Administrative Court (TEAC): the criteria set forth by the TEAC, which are binding on the Tax Administration, play a crucial role in influencing administrative practice and maintaining a level of uniformity throughout the region.

EU law is an important feature of the Spanish tax system because the Spanish Constitution recognises that some powers can be transferred to the EU. Consequently, EU laws and the basic freedoms of the internal market affect not only cross-border taxation, but also the exchange of information, anti-avoidance measures, State aid control, and tax dispute resolution mechanisms.

Spain has concluded a large number of treaties that involve more than 90 countries around the world and are mostly in line with OECD criteria. These agreements play a key role in international tax planning and in managing cross-border risks. The Spanish Tax Agency has an official database of treaty texts and related protocols, which can be accessed here.

1.2 Hierarchy of Sources

Once duly concluded and published in the BOE, international treaties in Spain become part of the domestic legal order and, when drafted with sufficient precision, may be directly invoked before Spanish courts and tax authorities alike.

Article 7 of the General Tax Law sets out the hierarchy with notable clarity. At the summit stands the Constitution. Alongside it are international treaties, including double taxation treaties (DTTs). These are followed by EU and other supranational rules, then domestic tax laws and implementing regulations.

Law 25/2014 on treaties strengthens this order. Treaties that are duly signed and published are binding on all public administrations and take precedence over conflicting domestic legislation (save for constitutional principles). Where there is conflict between treaties and domestic law, Spanish practice usually gives precedence to the treaty, and courts usually settle such issues by interpreting and applying the relevant treaty instead of allowing more recent domestic legislation to prevail.

Yet within this layered system resides a legal force that both integrates and transforms it: EU law. In cross-border tax matters within the EU, domestic rules and tax treaties must be applied consistently with EU law, including the principle of primacy and the stipulations derived from directives and the case law of the Court of Justice. EU regulations apply directly; directives, as a rule, require transposition into the Spanish legal system.

A recent Supreme Court judgment (12 January 2026) illustrates this interplay in an intra-EU royalty case.

The dispute concerned the withholding tax exemption implementing Directive 2003/49/EC, which eliminates source taxation on certain interest and royalty payments between associated companies in different member states. The exemption was denied because the recipient was not the beneficial owner of the income, but the taxpayer tried instead to rely on the exemption under the relevant DTT.

The Court held that beneficial ownership is an essential condition not only under the Directive but also within the treaty framework, and that the absence of such status indicated an abusive arrangement. In that context, the primacy of EU law prevented the treaty from being deployed as a shield against the EU-law anti-abuse analysis. A taxpayer cannot, in other words, circumvent a European anti-abuse finding by invoking bilateral treaty protection when the underlying structure lacks economic substance.

This does not appear to be a general demotion of treaties in favour of EU law, but rather a case-specific response to an intra-EU abusive scenario. The ordinary rule of treaty prevalence over domestic legislation remains intact.

Meanwhile, the practical landscape is shaped not only by formal sources of law but also by interpretative authorities. Binding rulings of the DGT and published decisions of the TEAC are not, strictly speaking, sources of law. Yet in practice they chart the path that tax authorities are likely to follow in audits and disputes.

1.3 OECD Model/United Nations Influence on Treaty Practice

Spain's treaty strategy, in general, is in line with OECD Model Convention, although there are still some older agreements in force that depart from the OECD structure, such as the maritime treaty with Venezuela or the historic inheritance treaty with Greece.

In recent years, however, Spain has moved decisively in step with the OECD/G20 Base Erosion and Profit Shifting (BEPS) project. If earlier decades were concerned with avoiding double taxation, the current focus is on preventing double non-taxation.

Through the Multilateral Instrument (MLI), Spain has woven anti-abuse standards directly into its treaty fabric. This includes the Principal Purpose Test (PPT), as well as updated provisions regarding permanent establishment definitions and Mutual Agreement Procedures (MAP). From a practical standpoint, advisers should always review the MLI positions adopted by both contracting states, as the final outcome depends on the matching of notifications and reservations between treaty partners.

1.4 Multilateral Instrument

Spain is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. The country signed the instrument on 7 June 2017, subsequently ratified it, and brought it into force with effect from 1 January 2022.

However, Spain made a reservation with respect to Article 35 (7)(a) of the MLI (entry into effect) and opted to apply a procedure whereby the MLI provisions apply to the double tax treaties in question once the other signatories have been notified that Spain has completed the ratification process. Spain has already made the relevant notifications to most of the other signatories.

Finally, it is worth noting that Spain has opted to apply the Principal Purpose Test rule to all its double tax treaties.

From a practical perspective, during 2022 and 2023 the Spanish Ministry of Finance published "synthetic texts" for several tax treaties affected by the MLI. These documents are not formally consolidated legal texts, but they are widely used in practice because they present the treaty wording together with the relevant MLI changes in a single working document.

They also include a standard disclaimer confirming that the authentic legal texts remain the treaty and the MLI, while noting that the synthetic text has been prepared in co-ordination with the competent authority of the other contracting state and reflects a common understanding of the MLI modifications. They usually also indicate the entry-into-effect dates of the relevant MLI changes. Access to the synthetic texts is available here.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

Spain's system, like most OECD countries, taxes its residents on their worldwide income, while reserving the right to tax non-residents only on income deemed to arise within Spanish territory.

Individuals who qualify as Spanish tax residents are subject to Personal Income Tax (PIT) on their worldwide income, regardless of where it arises. By contrast, individuals who are not tax resident in Spain are taxed only on income deemed to have a Spanish source under the Non-Resident Income Tax (NRIT) regime. In practical terms, determining residence status is therefore the key starting point for assessing the territorial scope of Spanish taxation.

Yet Spain, like a country with several historical layers, complicates this seemingly neat architecture with territorial particularities that have a significant impact.

- Canary Islands: the archipelago, which sits closer to Africa than Europe, benefits from a special economic and fiscal regime (REF). Most visibly, it applies its own indirect tax, the IGIC, instead of mainland VAT, but it also provides for a reduced CIT rate (4%) on certain income generated under specific conditions by certain taxpayers.
- Ceuta and Melilla: these autonomous cities are on the north side of the African coast. Income effectively generated there may benefit from a 50% tax credit in several major taxes, including PIT and CIT, provided that genuine local economic substance exists.
- Basque Country and Navarra: these regions are constitutional exceptions within the Spanish state. Under their historic "foral" regimes, the *Concierto Económico* and the *Convenio Económico*, these regions exercise significant tax autonomy. Their legislation broadly aligns with state-level rules, yet they maintain independent tax administrations, distinct procedural frameworks and, at times, nuanced substantive differences.

2.2 Tax Residence of Individuals

According to the current PIT legislation, if any of the following circumstances occur in a calendar year, a person will usually be deemed a tax resident in Spain.

- Physical presence test: a person spending more than 183 days in Spain in a year is deemed a resident. Although the rule appears to be simple (counting the days), it should be noted that occasional absences are included in the calculation unless the taxpayer can adequately prove tax residence in another jurisdiction.
- Centre of economic interests: Spain constitutes the main base or centre of economic interests.
- Family presumption: a rebuttable presumption of residence applies where the individual's spouse (unless legally separated) and dependent minor children habitually reside in Spain.

In cross-border situations, dual residence may lead to problems with other jurisdictions. In these situations, the relevant DTT has tie-breaker procedures that consider things like where the permanent home is, where the centre of vital interests is, where the habitual abode is, and sometimes even nationality.

2.3 Taxation of Resident Individuals

Individuals who qualify as Spanish tax residents are subject to PIT on their worldwide income. Spain follows the classic residence-based model: once residence is established, global income enters the tax base, irrespective of where it arises.

The system differentiates between two principal tax bases.

- General base: includes employment income, business and professional profits, imputed income and most ordinary categories of income. This base applies progressive rates, jointly determined by the central government and the autonomous regions, which means the final burden may vary depending on the taxpayer's place of residence within Spain. In some regions, the progressive marginal tax rates can be above 50%.
- Savings base: includes income such as dividends, interest and capital gains derived from the trans-

mission of assets. It is taxed separately at generally lower progressive rates between 19% and 30%.

In order to reduce international double taxation, several options are available within the applicable PIT regulations.

- Foreign tax credit: an ordinary credit is granted for foreign taxes effectively paid on income that is also subject to Spanish taxation. The limit is set at the lower of the foreign tax paid or the Spanish tax that should be attributable to that income.
- Specific exemptions: notably, employment income derived from work performed abroad may be exempt up to EUR60,100 per year, provided certain conditions are met, including that the work is carried out for a non-resident entity or a foreign permanent establishment, and that the host country applies a tax comparable to Spanish PIT.

In addition, Spain's PIT legislation also offers a special regime for qualifying inpatriates. This regime is commonly known as the "Beckham Law", and it benefits people who move to Spain during the year they acquire their Spanish residence status and the following five tax years. The main feature of the Beckham Law is that eligible taxpayers may choose to be taxed under regulations that are similar to those of the NRIT. This means that foreign-source income is largely excluded from Spanish taxation, which can significantly reduce overall exposure for internationally mobile executives, entrepreneurs and investors. The regime also influences Wealth Tax: beneficiaries are only taxed on assets and rights that are located in or can be used in Spain, not on assets that are in other countries.

2.4 Taxation of Non-Resident Individuals

Individuals who are not tax resident in Spain are subject to taxation under the NRIT regime on Spanish-sourced income, which includes, among others:

- income attributable to a Spanish permanent establishment;
- employment income derived from work physically performed in Spain;
- income from Spanish real estate (including imputed income for urban properties not rented out);
- dividends, interest and royalties paid by Spanish entities or otherwise sourced in Spain; and
- capital gains derived from certain Spanish assets, particularly real estate.

Non-resident taxation is typically applied on a gross basis, with limited deductions, although residents of EU/EEA jurisdictions (subject to effective exchange-of-information requirements) may benefit from more favourable rules, including the possibility of deducting certain expenses directly related to the income obtained.

Headline tax rates generally stand at 24%, reduced to 19% for EU/EEA residents, in each case subject to the provisions of applicable double tax treaties, which may reduce withholding rates or allocate taxing rights differently.

Interest, dividends, and capital gains are, however, generally taxed at a flat rate of 19%, irrespective of whether the taxpayer is resident in an EU/EEA jurisdiction.

2.5 Tax Residence of Legal Entities

A legal entity is regarded as tax resident in Spain if any of the following criteria is met:

- incorporation under Spanish law;
- registered office located in Spain; or
- place of effective management situated in Spain.

The notion of effective management focuses on where strategic decision-making and overall direction of the entity's activities are actually exercised. In practice, this involves examining governance arrangements, the location of board meetings, the role and residence of senior management, and where operational control is genuinely carried out.

Spanish law also has rules against tax avoidance for businesses that are based in low-tax or non-cooperative countries. Where a company's principal assets or core activities are effectively located in Spain, a presumption of Spanish tax residence may arise.

That presumption, however, is not irrebuttable. The taxpayer may overturn it by demonstrating that incor-

poration and management abroad respond to valid economic reasons and that effective management is genuinely exercised outside Spain.

Tax residence entails the obligation to declare worldwide income for CIT purposes, which means that an incorrect assessment of residence can have a significant impact on an entity's finances.

2.6 Definition of Permanent Establishment

The concept of permanent establishment (PE) is defined under Spanish domestic law in the NRIT Act, which is the starting point for determining whether a non-resident is taxable in Spain on business profits attributable to a presence in Spain. As a general rule, a PE exists where a non-resident has, on a continuous or habitual basis, facilities or a place of work in Spain through which all or part of its activity is carried on, or where it acts in Spain through an agent authorised to contract in the name and on behalf of the non-resident who habitually exercises those powers. The statutory examples include management offices, branches, offices, factories, workshops, warehouses, mines and construction/installation projects lasting more than six months.

In treaty cases, however, the applicable double taxation treaty definition prevails over domestic law. Spain's treaty PE clauses are generally aligned with Article 5 of the OECD Model, although there are treaty-specific variations (for example, on construction thresholds, the wording of specific activity exemptions, and the drafting of agency PE provisions). In practice, PE analysis in Spain therefore requires a dual review: domestic law for local qualification and compliance, and the relevant treaty for the final threshold and allocation of taxing rights.

A notable feature of Spanish practice is the so-called "Spanish approach" to PE, which became particularly visible in the *Dell* litigation. Spanish courts endorsed a substance-based analysis under which a formal commissionaire or limited-risk structure may still give rise to a PE where the Spanish entity performs core business functions and operates under the close direction and control of the foreign enterprise. This approach is often viewed as anticipating, in practical terms, the broader anti-fragmentation and anti-avoidance concerns later addressed in the OECD BEPS Action 7 work.

The MLI is also relevant to PE analysis in Spain. In its MLI position, Spain adopted Article 12 (commissionnaire arrangements and similar strategies) and opted for Article 13 Option A (specific activity exemptions), which generally narrows the availability of automatic exemptions for preparatory/auxiliary activities and strengthens anti-avoidance rules for agency structures where the relevant treaty partner has made matching choices. By contrast, Spain reserved out of Article 14 (splitting-up of contracts), meaning that this rule does not apply through the MLI to Spain's covered treaties. As a result, the impact of the MLI on PE risk in Spain must be assessed treaty by treaty, depending on the counterparty's MLI position and the entry-into-effect status of the relevant provisions.

Finally, administrative practice remains important. DGT rulings and tax audit practice often adopt a substance-oriented view of local functions, people and assets when assessing PE exposure, particularly in distribution, commissionaire and service structures. For that reason, PE risk assessments in Spain are typically driven as much by the operational footprint in Spain as by the formal contractual allocation of roles.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Spanish taxes apply to income from real estate in Spain, regardless of where the taxpayer lives. However, the laws for residents and non-residents are different.

Residents

People who live in Spain and rent out property are taxed under PIT on the rental income they get, which can be either investment income or business revenue, depending on how organised and active the rental operation is. For PIT purposes, classifying real estate leasing as a business activity means that the rental operation must have at least one full-time employee. Most costs that are directly tied to rental activity can be deducted. Spanish law also states that if you own urban real estate for personal use and do not rent it

out, the taxpayer needs to declare "imputed income," which is 2% of the cadastral value (or 1.1% if the cadastral values have been recently changed).

Spanish corporate taxpayers are taxed under CIT on real estate income as part of their ordinary taxable base, which is generally determined by reference to accounting profit, subject to the tax adjustments provided by law. However, Spain provides a special CIT regime for entities mainly engaged in residential letting, which may grant a partial tax credit/relief on qualifying rental income, subject to statutory conditions (including asset/use requirements and minimum holding periods).

Under CIT rules, real estate letting qualifies as an economic activity only if it is managed with at least one full-time employee under an employment contract. Where the taxpayer is part of a group (Article 42 Commercial Code), this test is applied at group level, regardless of residence or consolidation requirements.

Non–Residents (No PE)

Income from Spanish real estate is considered Spanish-source income and is subject to taxation under the NRIT framework. Relevant situations include the following.

- Rental income is typically taxed on a gross basis, without the deduction of expenses. However, residents of EU or EEA jurisdictions that benefit from the effective exchange of information may deduct expenses directly connected to the rental income.
- Recent case law (third-country residents): a national court judgment (28 July 2025) has established that non-EU/EEA residents may also deduct expenses directly linked to Spanish rental income (in that case, a US resident), on the basis of the free movement of capital. This is a notable development, but it should be treated with caution pending possible Supreme Court review and/or a change in administrative practice.
- Imputed income on urban property held for personal use, calculated using the same 2%/1.1% methodology as for residents.

Compliance is usually carried out through Form 210 filings.

Transfers by Non–Residents (No PE)

Spain applies a mechanism aimed at securing tax collection in the transfer of Spanish real estate by non-residents without a PE. Under this rule, the purchaser is required to withhold 3% of the acquisition price as an advance payment on account of the seller's capital gains tax liability (Form 211).

3.2 Business Profits

The taxation of business profits in Spain is mainly based on the residence status and whether or not a permanent establishment exists.

- Residents: generally, individual entrepreneurs are taxed under the PIT on their net business income. Revenues are reduced by deductible expenses, and the resulting margin becomes part of the individual's taxable base. Corporate entities resident in Spain fall under the CIT, generally at a flat rate of 25%, although the law provides certain reduced rates or special regimes in specific cases (eg, newly created entities or specific sectors).
- Non–residents with a Spanish PE: business profits attributable to a Spanish PE are generally determined using principles broadly aligned with CIT rules, including arm's length attribution of income and expenses. The applicable tax rate mirrors the corporate tax rate. A branch remittance tax of 19% may apply to profits transferred abroad, although exemptions exist for EU-resident entities and where reduced or eliminated under applicable tax treaties.
- Non–residents without a PE: business income sourced in Spain without creating a PE is generally taxed under NRIT rules at a rate of 24% (reduced to 19% for qualifying EU/EEA residents).

3.3 Passive Income

Residents

Spanish tax resident individuals are taxed on their worldwide passive income (including dividends, interest and royalties) under PIT. As a general rule, these items are taxed as investment income within the savings tax base (subject to progressive savings rates). A 19% domestic withholding tax generally applies as a payment on account (eg, on dividends and interest), and any foreign withholding tax may usually be

credited in Spain, subject to the statutory limits and the applicable treaty.

Spanish corporate taxpayers are taxed on worldwide income under the CIT, so dividends, interest and royalties are generally included in the taxable base (accounting profit, subject to tax adjustments). However, qualifying dividends (and certain capital gains on shareholdings) may benefit from the participation exemption regime, subject to the conditions set out in the CIT legislation. Alternatively, double tax relief may also be available. Interest and royalties are usually taxed according to the conventional CIT rules, although domestic and foreign withholding taxes are normally creditable against the final CIT liability and therefore reduce the overall tax burden.

Non-Residents

Passive income derived by non-residents without a permanent establishment is typically subject to withholding taxation under Spanish domestic law.

- Dividends: generally subject to withholding (commonly 19% under domestic rules), although exemptions may apply (eg, under the EU Parent-Subsidiary framework, subject to conditions and anti-abuse rules).
- Interest: generally subject to 19% withholding under domestic rules, but Spain also provides important domestic exemptions in specific cases (EU).
- Royalties: generally subject to withholding under domestic law (19% for EU/EEA residents; otherwise, 24%), although treaty relief is often available and, in EU cases, exemption may apply subject to the relevant conditions being met.

Spain's treaty network frequently reduces or eliminates withholding tax on dividends, interest and royalties, but access to treaty benefits depends on the treaty wording (including beneficial ownership and anti-abuse clauses, and in many cases MLI/PPT effects). Relief may be obtained at source if the payer has the required documentation, or otherwise by refund.

In addition, Spanish domestic law provides several exemptions relevant to non-residents without a PE, including (subject to conditions) income from Spanish public debt, certain securities issued in Spain, non-resident bank accounts, certain container and bareboat shipping/aircraft income used in international transport, and certain gains on listed securities or fund redemptions. It also includes specific exemptions for certain dividends received by qualifying pension funds and collective investment vehicles.

Although the pension fund exemption is drafted by reference to EU/EEA-equivalent institutions, Spanish case law has extended comparable treatment to certain third-country pension funds (eg, Canada) on the basis of the free movement of capital, subject to comparability and information-exchange requirements. In practice, the analysis of non-resident withholding should therefore consider domestic exemptions, EU law and treaty relief together.

3.4 Capital Gains

Residents (Individuals)

Capital gains realised by Spanish tax resident individuals are generally taxed under PIT and, in most cases, are included in the savings tax base when derived from the transfer of assets (subject to the applicable progressive savings tax rates ranging from 19% to 30%).

Residents (Corporate Taxpayers)

Spanish corporate taxpayers pay CIT on capital gains as part of their regular taxable base (that is, accounting profit that is subject to statutory tax adjustments). So, capital gains are usually taxed according to the normal CIT regulations. However, there may be exceptions or special rules in some situations, such as the participation exemption regime for qualified shareholdings, which is subject to the restrictions laid out in the CIT legislation.

Non-Residents (No PE)

If non-residents realise capital gains from Spanish-source assets, they may be subject to taxation in Spain under the NRIT laws. Examples include:

- disposals of Spanish real estate;
- transfers of shares in Spanish entities; and
- transfers of shares in property-rich entities (ie, entities whose value derives mainly from Spanish real

estate, where the treaty or domestic rules permit Spain to tax the gain).

In real estate transactions involving a non-resident seller, the purchaser is generally required to withhold 3% of the purchase price as a payment on account of the seller's NRIT liability.

In cross-border cases, however, the final taxing outcome depends on the applicable DTT. As a general rule, gains from Spanish immovable property are usually taxable in Spain under treaty provisions (typically aligned with Article 13 (1) OECD Model). By contrast, gains from shares may or may not be taxable in Spain depending on the treaty wording, including whether the treaty includes a property-rich company clause. For that reason, careful analysis of the relevant treaty is essential in capital gains cases involving non-resident investors.

3.5 Employment Income

Employment income taxation in Spain is primarily based on where the work is physically performed. Income derived from services rendered in Spain is generally treated as Spanish-source income and taxed accordingly for non-residents under the NRIT, while Spanish tax residents are taxed on their worldwide employment income.

Residents may benefit from specific reliefs, notably the foreign work exemption (Article 7.p PIT), subject to statutory requirements and limits, in addition to the foreign tax credit for taxes paid abroad.

Spain does not have any explicit laws for remote workers, so the rules that are already in place apply to this situation. Remote work can create problems with corporate taxes, like PE exposure, depending on whether the home office is a fixed place of business of the company or whether the employee acts as a dependent agent.

Following the recent update to the Commentaries on the OECD Model Tax Convention, when assessing if PE based on a fixed place of business exists, three key elements must be considered:

- whether the place is at the disposal of company;
- whether the enterprise's business is carried on through that place; and
- whether such activity is carried out on a habitual basis.

It is therefore very important to carefully examine the facts and the treaties in each case.

3.6 Other Income

Certain categories of income are subject to specific domestic rules that may differ from standard OECD Model Convention approaches.

- Imputed real estate income: where urban real estate is held for personal use and not rented, Spanish law requires the recognition of "imputed income," calculated as 2% of the cadastral value (or 1.1% depending on the case), which is included in the taxable base.
- Special annual tax for non-resident entities resident in non-cooperative jurisdictions owning Spanish urban real estate: a 3% levy on cadastral value (deductible from NRIT base where relevant).

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

As of 24 February 2026, Spain has not enacted any legislation to implement Pillar One – Amount B. Therefore, the CIT legislation continues to govern transfer pricing in Spain. This includes the arm's length concept that applies to transactions between related parties. The current rules are mostly in line with the OECD Transfer Pricing Guidelines.

Spain has therefore not introduced a domestic simplified pricing mechanism for baseline marketing and distribution activities based on Amount B. No elective safe harbour or fixed return system has been incorporated into Spanish law to date.

In practice, multinational groups must continue to substantiate Spanish transfer pricing positions using traditional methods, supported by benchmarking analyses and contemporaneous documentation, unless and until specific implementing measures are enacted.

4.2 Pillar One – Amount A

Spain has consistently supported a multilateral solution to the taxation of the digitalised economy within the OECD/G20 Inclusive Framework, but Amount A has not yet been implemented in Spain. In practical terms, there are no domestic rules in force that allocate taxing rights under Pillar One Amount A.

In the meantime, Spain continues to apply its unilateral Digital Services Tax (DST or *Impuesto sobre Determinados Servicios Digitales* in Spanish), which was introduced as a domestic measure while international negotiations were ongoing, pending an international solution.

Accordingly, Spain's current position can be described as politically supportive of Amount A in principle, but continues to operate under existing domestic rules (including the DST) until a binding multilateral instrument enters into force and is implemented. No Spain-specific implementation features or deviations for Amount A are currently in force.

4.3 Pillar Two

Spain implemented the global minimum tax with Law 7/2024. This law created a top-up tax system that ensures that large local and multinational groups pay at least 15% in taxes.

The regime entered into effect on 22 December 2024 and applies to fiscal years beginning on or after 31 December 2023, subject to certain exceptions.

Before this regime entered into effect, the Spanish CIT legislation had previously set a minimum CIT rate of 15% for certain CIT taxpayers as of 1 January 2022. This rate applies to taxpayers (i) whose turnover is more than EUR20 million or (ii) who are taxed under the CIT consolidation regime.

4.4 Specific Features or Deviations of Pillar Two

Spain, for its part, has implemented the global minimum tax largely in line with the OECD framework and the corresponding EU Directive. The structure is familiar, the terminology recognisable, and the mechanics broadly harmonised. However, as often happens when international consensus is incorporated into domestic law, the universal design develops a subtle national character.

- Qualified Domestic Minimum Top-Up Tax (QDMTT): perhaps the most telling example is Spain's adoption of a QDMTT, formally enacted as the *Impuesto complementario nacional*. This allows Spain to collect more tax locally when Spanish businesses do not meet the minimum effective tax rate threshold.
- Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR): both primary and secondary charging mechanisms are now part of domestic law.
- Transitional safe harbours: these include CbCR-based relief mechanisms for the first few years of implementation and temporary limits on when UTPR can be used in certain situations.

From a technical standpoint, Spain's rules do not radically depart from the OECD design. But from a practical standpoint, the shift is profound. Compliance under Pillar Two is data-intensive, calculation-heavy, and governance-sensitive. This means that groups within its scope need to start modelling processes at an early stage.

4.5 Digital Services Tax

Spain has implemented a specific DST through Law 4/2020. It consists in a 3% indirect tax on certain in-scope digital services, mainly online advertising services, online intermediation services and the transfer of user data generated from digital interfaces. It applies only to large groups meeting the statutory revenue thresholds (both global and Spanish-source thresholds).

It entered into force on 16 January 2021 and remains in force. Although it was introduced in the context of the OECD/G20 discussions and presented as an interim domestic measure pending an international solution, Spain continues to apply it in practice

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

In Spain, the system currently in force as of February 2026 establishes a clear distinction between administrative violations, criminal tax fraud, and abusive schemes that are addressed under the General Anti-Avoidance Rule (GAAR).

Under the GTL, abuse arises where arrangements are artificial or improper and primarily designed to obtain a tax advantage without generating relevant non-tax effects. If the tax authorities conclude that such abuse exists, they may disregard the chosen arrangement and recalculate taxation based on the transactions that would have occurred under ordinary circumstances. This recharacterisation follows a special consultative process, which shows that GAAR application is not automatic and is protected by legal rules.

The GTL also covers administrative violations, which can lead to penalties such as fines that range from minor to very significant depending on various factors, such as repeated violations or the use of fraudulent means.

Criminal tax fraud may apply where deliberate underpayment exceeds statutory thresholds (EUR120,000 per tax and period) and is prosecuted under the Criminal Code.

In cross-border contexts, certain indicators such as lack of economic substance, use of non-cooperative jurisdictions, hybrid mismatches, excessive interest deductions and low-taxed passive income structures may be key risk indicators.

5.2 Anti-Avoidance Mechanisms

Spain combines a general anti-abuse framework under the GTL (including the "conflict in the application of the tax rule" doctrine) with a broad set of specific anti-avoidance provisions, particularly under the CIT legislation. These mechanisms address both substantive tax avoidance and the detection/prevention of fraud and evasion.

Key anti-avoidance rules include:

- the interest deduction limitation regime, including the general limitation (generally 30% of tax EBITDA, subject to statutory thresholds and carryforwards) and the specific rule for certain acquisition-financing structures;
- the specific non-deductibility rule for financial expenses on intra-group debt used to acquire participations from, or make contributions to, other group entities (unless valid economic reasons are evidenced);
- hybrid mismatch rules;
- the controlled foreign company (CFC) regime;
- transfer pricing rules (including documentation requirements and valuation adjustments); and
- specific rules and defensive measures for transactions involving non-cooperative jurisdictions.

In addition, Spain has strengthened tax control through extensive reporting and transparency obligations (including mandatory disclosure rules for certain cross-border arrangements and information reporting by digital platforms), together with broad investigative powers for the tax authorities, such as inspection procedures, information requests and precautionary measures, all subject to procedural and constitutional safeguards.

5.3 Blacklists and Non-Cooperative Jurisdictions

Spain has an official list of "non-cooperative jurisdictions" for tax purposes. This list is presently in Order HFP/115/2023, which replaced the term "tax haven" with the broader term currently in use. The Order entered into force on 11 February 2023 (with a deferred effective date of 11 August 2023 for jurisdictions newly added to the list).

This list sits within a broader statutory framework in Additional Provision 1 of Law 36/2006 (as amended, notably by Law 11/2021), which allows Spain to classify not only countries/territories but also certain harmful tax regimes as non-cooperative. The criteria are broader than the former "tax haven" concept and include transparency and exchange-of-information standards, effective exchange in practice, beneficial

ownership transparency, harmful offshore structures, and low or nil taxation.

Historically, Spain relied on the closed list in Royal Decree 1080/1991. That regime remains relevant as background, but the current system is more flexible: the list is now updated by ministerial order under the Law 36/2006 criteria, and the existence of a tax treaty or exchange-of-information agreement no longer automatically prevents a jurisdiction from being classified as non-cooperative.

Depending on the tax and the specific provision, Spanish tax rules may impose stricter tax treatment on transactions involving entities or transactions linked to non-cooperative jurisdictions. This could include stricter tests for deductibility and business purpose, more documentation and valuation requirements, limits on the use of certain exemptions or special regimes, and more reporting and compliance burdens.

5.4 Reporting Obligations and Disclosure Regimes

Spain has implemented extensive reporting obligations aligned with EU transparency initiatives, which include:

- DAC6 reporting for certain cross-border transactions that meet specific hallmarks (Forms 234, 235 and 236);
- country-by-country reporting (Form 231);
- platform economy reporting under DAC7 (Form 238); and
- disclosure of foreign assets (Form 720) and crypto-assets held abroad (Form 721).

These regimes are designed to strengthen early detection of potentially aggressive tax planning structures and to improve automatic exchange of information between jurisdictions. The objective is to clearly reduce opacity in cross-border transactions, while providing the Tax Administration with sufficient data for its purposes.

5.5 Role of Tax Authorities and Enforcement Measures

The GTL grants the Spanish tax authorities broad powers to investigate tax evasion. They may request information and supporting documentation from taxpayers, third parties and public bodies. All of them have a general obligation to co-operate with the tax authorities. During audit and inspection procedures, authorities may request accounting records, contracts, invoices and electronic documentation, record findings in official minutes, and adopt precautionary measures.

As regards entry powers, a key distinction must be made between constitutionally protected premises and non-protected business premises. For constitutionally protected premises, the tax authorities need either the taxpayer's consent or prior judicial authorisation. This protection clearly covers private homes (individual taxpayers) and may also extend to certain premises of legal entities where they form part of a private sphere reserved from third parties (ie, not open to the public or purely operational). By contrast, entry into non-protected business premises may be carried out under inspection powers, subject to the applicable legal procedures. Spanish case law requires that judicial authorisation for entry into protected premises be specifically reasoned and proportionate.

In serious cases, tax investigations may also lead to criminal tax fraud proceedings under the Criminal Code. Taxpayer information is generally protected by tax confidentiality rules, subject to the exceptions provided by law.

6. Penalties and Sanctions

6.1 Tax Penalties

Spain applies a unified administrative framework for tax penalties under the GTL, which applies equally to domestic and cross-border transactions. Tax infringements include, among others, failure to pay self-assessed tax on time, incorrect reporting and the improper application of tax benefits. Penalties are generally monetary and are classified as minor, serious or very serious, depending on the nature of the conduct and the statutory grading criteria.

The penalty procedure is governed by Royal Decree 2063/2004 (General Regulation on the Tax Penalty Regime), which provides procedural safeguards,

including the taxpayer's right to be heard and to appeal.

Penalties are imposed and enforced by the competent Spanish tax administration (state, regional or local, depending on the tax). Taxpayers may challenge penalty decisions through the economic-administrative review system and then before the judicial courts. The system also provides for statutory reductions (eg, for agreement and prompt payment), which in practice encourage early settlement.

Where there are indications of a tax crime, a specific regime applies under Articles 250–257 GTL. In those cases, the tax authorities may refer the matter to the public prosecutor or criminal court and may also issue a tax assessment linked to the suspected offence, subject to the statutory exceptions.

6.2 Criminal Penalties

Tax fraud is a criminal offence under the Spanish Criminal Code when the amount evaded (or refunds improperly obtained/withholdings not paid) exceeds EUR120,000, generally measured per tax and tax period (or per calendar year for periodic taxes).

The basic offence is punishable by (i) imprisonment from one to five years; and (ii) a fine of one to six times the defrauded amount. Additional consequences include disqualification from obtaining public subsidies or aid, and from benefiting from tax or Social Security incentives, generally for three to six years.

Aggravated tax fraud applies where the defrauded amount exceeds EUR600,000, or where the fraud involves organised structures or concealment mechanisms (including interposed entities or similar arrangements). In aggravated cases, penalties increase to (i) imprisonment from two to six years; and (ii) a fine from two to six times the defrauded amount, together with longer disqualification periods.

6.3 Interaction Between Tax and Criminal Procedures

Spanish law provides a structured co-ordination mechanism between tax and criminal proceedings in cases of suspected tax crime. Where the Tax Administration identifies indications of a criminal tax offence, it may refer the case to the public prosecutor or the competent criminal court.

Administrative and criminal procedures may run in parallel. The tax authorities may continue the administrative track and issue a tax assessment linked to the suspected criminal offence, even if the file is referred to the criminal authorities, although administrative penalties for the same facts cannot be imposed if a criminal conviction is ultimately issued. The final criminal judgment prevails and may require adjustment of administrative assessments.

Co-ordination is ensured through the GTL framework and the practical co-operation between the tax authorities, prosecutors and criminal courts. Tax authorities also help with the enforcement phase by collecting penalties and civil liabilities that come from criminal judgments.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Spain's framework for administrative co-operation in tax matters is based on multilateral instruments, EU legislation, bilateral treaties and domestic implementing rules. This reflects Spain's alignment with international transparency and cross-border tax enforcement standards.

At multilateral level, Spain is a party to the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (MAAC), which has been published in the BOE. The Convention provides a broad legal basis for administrative co-operation, including exchange of information on request, spontaneous exchange and automatic exchange, and it also applies in relation to participating jurisdictions outside the EU framework.

Within the EU, the key framework is Directive 2011/16/EU (DAC), as amended. Spain has implemented the successive DAC measures in domestic law, including Law 13/2023, which extended reporting and exchange obligations (particularly for digital platform operators) and strengthened administrative co-operation tools.

Spain also applies the Common Reporting Standard (CRS) under Royal Decree 1021/2015, with annual reporting made through Form 289. In parallel, it participates in multilateral competent authority agreements on platform income exchanges and other transparency measures.

Spain's treaty network (including double taxation treaties (DTTs) and Tax Information Exchange Agreements) also provides a bilateral basis for exchange of information and other forms of administrative assistance, usually through exchange-of-information provisions and, where relevant, assistance in collection.

At domestic level, the GTL, particularly Articles 93 and 94, sets out broad information obligations for taxpayers and third parties and underpins Spain's participation in international mutual assistance mechanisms.

7.2 Exchange of Information Clauses in Tax Agreements

Spain exchanges tax information on an on-request, spontaneous and automatic basis through the MAAC, the EU administrative co-operation framework (DAC), Spain's treaty network and specific bilateral arrangements (including the Foreign Account Tax Compliance Act (FATCA) with the USA).

In practice, automatic exchanges cover financial account information (CRS/FATCA), digital platform reporting (DAC7) and the income categories exchanged within the EU DAC framework. Spain also participates in EU VAT administrative co-operation to address cross-border VAT fraud.

7.3 Other Forms of International Tax Collaboration

Spain participates in several forms of multilateral tax co-operation beyond MAP and advanced pricing agreement (APA) options. In particular, it takes part in the OECD's International Compliance Assurance Programme (ICAP) and in the EU's co-operative compliance initiatives, including the European Trust and Cooperation Approach (ETACA).

Spain also participates in simultaneous tax controls and, following the DAC7 transposition, Spanish law now expressly provides for joint audits/joint inspections within the mutual assistance framework.

Spain also participates in EU VAT administrative co-operation, including Eurofisc, which supports the exchange of information and co-ordinated action to combat cross-border VAT fraud.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Spain has an established MAP framework for dealing with double taxation cases and disputes on the interpretation or application of treaties and EU dispute resolution instruments.

In practice, the MAP regime in Spain is built on three layers: treaty provisions, EU rules and domestic procedural legislation.

First, Spanish double tax treaties generally include a MAP article (usually following the OECD Model approach). For direct taxes, the domestic procedural rules are set out in Royal Decree 1794/2008, which governs how MAP cases are handled at national level.

Secondly, the EU Arbitration Convention (90/436/EEC) also remains an important route in practice for transfer pricing disputes between associated enterprises in different EU member states.

Thirdly, Directive (EU) 2017/1852 (Tax Dispute Resolution Directive) has been implemented in Spain and provides a more structured framework, with clearer procedural deadlines and, in eligible cases, access to binding dispute resolution.

In addition, the tax authorities have published guidance on the scope of MAP, the steps to be followed and the relationship between the different legal bases. This is particularly useful in practice when assessing which route is available in a given case.

8.2 Application Deadlines

MAP requests are generally subject to a three-year filing period, calculated from the date of the first noti-

fication of the action that gives rise, or may give rise, to treaty-inconsistent taxation.

This is not uniform across all treaties, however, as the applicable MAP article may set a different time limit. For example, the Spain–Portugal DTT sets a two-year deadline, whereas the Spain–US DTT provides for five years. In practice, the relevant treaty provision should be reviewed at the outset to confirm whether the taxpayer is still within time.

8.3 Mandatory Binding Arbitration

Mandatory binding arbitration is provided for in Spain in respect of specific cross-border tax disputes.

At EU level, the mechanism may be triggered under the EU Arbitration Convention or the Tax Dispute Resolution Directive if the competent authorities fail to resolve the case within the prescribed time limits. These mechanisms are intended to secure a final resolution and reduce the risk of double taxation remaining unresolved.

In addition, Spain has opted to apply Part VI (Arbitration) of the MLI, although with reservations. As a result, binding arbitration may be available under covered tax treaties where both contracting jurisdictions have made compatible elections. Spain's participation is subject to certain reservations, including the exclusion of cases that have already or are being decided by domestic courts.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Spain has developed a well-established APA programme (*acuerdos previos de valoración*) designed to provide clarity in advance on whether related-party transactions comply with the arm's length principle.

At its core, the programme allows companies to agree beforehand with the tax authorities on the methodology used to price intra-group transactions. Spain offers unilateral, bilateral and multilateral APAs. A unilateral agreement may bring comfort domestically, a bilateral or multilateral one adds alignment across borders, which is often where transfer pricing disputes become most complex. For multinational groups, this makes the APA programme not just a compliance tool, but a strategic instrument for managing risk before it crystallises.

The legal framework is primarily set out in the CIT Regulation (Royal Decree 634/2015). Importantly, this regulation goes beyond traditional transfer pricing APAs. It also provides for advance agreements concerning the valuation of research and development expenses and the qualification or valuation of income derived from certain intangible assets, including the patent box regime.

The Spanish Tax Agency has added extensive procedural guidelines to the legal framework. This includes the prerequisites for qualifying, how to file, and an overview of the administrative process. The proceedings are handled by teams or Inspection Units designated by the State Tax Agency's Department of Financial and Tax Audits, specialised in the matter.

APAs remain valid for the tax periods specified in the agreement, provided that they do not exceed the four tax periods following the tax period in which the APA is approved. However, it may also be determined that its effects extend to transactions carried out in prior tax periods not affected by the statute of limitations.

9.2 Other Mechanisms

Spain has developed several mechanisms designed to reduce tax uncertainty and prevent disputes.

Binding Rulings (DGT)

Taxpayers can request a written interpretation from the DGT. The ruling is binding not only on the taxpayer who requested it, but also on other taxpayers if there is identity between the facts and circumstances of the taxpayer concerned and those addressed in the ruling.

These rulings are particularly useful in international contexts. Companies frequently seek clarification on issues such as whether a permanent establishment exists, how withholding tax should be applied, or whether treaty benefits are available. By obtaining an answer before implementing a transaction, taxpayers may reduce uncertainty and potential audit risk.

Co-operative Compliance and Enhanced Engagement

Spain has also established a voluntary co-operative compliance system in addition to formal rulings. Tax authorities have set up structured forums for large businesses, small businesses, and other taxpayer organisations through the "Cooperative Relationship" model and the Code of Good Tax Practices. These forums are based on the principles of transparency and mutual trust and foster a mutually co-operative relationship between the Tax Agency and taxpayers. This framework reduces the legal uncertainty to which companies could be exposed and the litigation that arises between them and the Tax Agency.

Additional Advance Agreements

Spain also offers advance agreements beyond traditional transfer pricing APAs. Taxpayers can enter into agreements regarding the valuation of R&D expenses and the qualification or valuation of income derived from intangible assets, including patent box regimes.

SWEDEN



Law and Practice

Contributed by:
Christoffer Dahl, Niclas Söderlund, Michel Weimer and Björn Mårtensson
XR Legal

Contents

1. Sources and Principles p.445
1.1 Domestic Sources of International Tax Law p.445
1.2 Hierarchy of Sources p.445
1.3 OECD Model/United Nations Influence on Treaty Practice p.445
1.4 Multilateral Instrument p.446

2. Territoriality, Residence and Permanent Establishment p.446
2.1 General Principle of Territorial Taxation p.446
2.2 Tax Residence of Individuals p.446
2.3 Taxation of Resident Individuals p.446
2.4 Taxation of Non-Resident Individuals p.447
2.5 Tax Residence of Legal Entities p.447
2.6 Definition of Permanent Establishment p.447

3. Taxation of Cross-Border Income p.448
3.1 Income From Immovable Property p.448
3.2 Business Profits p.448
3.3 Passive Income p.448
3.4 Capital Gains p.449
3.5 Employment Income p.450
3.6 Other Income p.450

4. OECD/G20 Global Tax Reform p.450
4.1 Pillar One – Amount B p.450
4.2 Pillar One – Amount A p.450
4.3 Pillar Two p.450
4.4 Specific Features or Deviations of Pillar Two p.451
4.5 Digital Services Tax p.451

5. Anti-Avoidance and Anti-Evasion Measures p.451
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.451
5.2 Anti-Avoidance Mechanisms p.451
5.3 Blacklists and Non-Cooperative Jurisdictions p.452
5.4 Reporting Obligations and Disclosure Regimes p.452
5.5 Role of Tax Authorities and Enforcement Measures p.452

6. Penalties and Sanctions p.453
6.1 Tax Penalties p.453
6.2 Criminal Penalties p.453
6.3 Interaction Between Tax and Criminal Procedures p.453

7. Administrative Co-Operation p.453
7.1 Legal Framework for Administrative Co-Operation p.453
7.2 Exchange of Information Clauses in Tax Agreements p.453
7.3 Other Forms of International Tax Collaboration p.453

8. Mutual Agreement Procedures and Arbitration p.453
8.1 Availability and Legal Basis p.453
8.2 Application Deadlines p.453
8.3 Mandatory Binding Arbitration p.454

9. Dispute Prevention p.454
9.1 Advance Pricing Agreements p.454
9.2 Other Mechanisms p.454

XR Legal is an independent business law firm with a particular focus on tax law issues. The lawyers have many years of experience with both Swedish and international issues, giving them the opportunity to provide clear tax advice and recommendations. Through its well-established network of contacts in Sweden and abroad, it offers specialist expertise in all areas of business law.

Authors

Christoffer Dahl has been working with tax matters since 2019. He began his career focusing primarily on income tax issues for owner-led companies. He then proceeded to work with domestic and cross-border M&A transactions and restructurings with a diverse range of clients, including private equity firms and large corporations. Christoffer is the latest addition to XR Legal, and he advises on a wide spectrum of income tax matters across various industries and client types.

Niclas Söderlund at XR Legal has more than 25 years of experience working with tax matters. He has been Head of Tax at some of Sweden's largest companies, most recently AB Electrolux and Telia Company AB. He has gained extensive experience in general and international corporate tax matters, dispute resolution and litigation. Niclas has background from the Administrative Court of Appeal and has previous experience from working at law firms since 2019. He also assists clients on real estate matters, structuring and financing real estate projects. Niclas Söderlund is a member of the Swedish Bar Association.



Michel Weimer at XR Legal has been dealing with tax law for more than 15 years, primarily regarding Swedish and international personal and corporate taxation. He has experience and expertise in cross-border restructurings and establishing companies in Sweden or abroad, and in helping individuals to move to or from Sweden. Michel also has many years of experience of transfer pricing and assisting multinational corporate groups with structuring and implementing intragroup transfer pricing models, as well as preparing relevant intragroup transfer pricing documentation. Michel also has detailed knowledge of the tax rules concerning owners/entrepreneurs with "closely held companies" (Sw: Fåmansföretag). Michel Weimer is a member of the Swedish Bar Association.



Björn Mårtensson at XR Legal has been involved with tax cases since 1990, mainly assisting Swedish and international companies and their owners regarding income tax matters. Björn has gained considerable experience over the years and has worked in practically every area of income tax law. He has also built up an extensive knowledge of problems and opportunities in other tax areas, such as VAT, civil law and accounting. His strengths lie in dealing with income tax matters concerning transactions, restructuring and incentive programmes in medium-sized and large owner-managed companies and companies with an international focus. Björn Mårtensson is a member of the Swedish Bar Association.

Contributed by: Christoffer Dahl, Niclas Söderlund, Michel Weimer and Björn Mårtensson, **XR Legal**

XR LEGAL ADVOKAT AB

Västra Trädgårdsgatan 6A,
111 53 Stockholm

Tel: +46738043399
Email: Christoffer.dahl@xrlegal.se
Web: Xrlegal.se

XR LEGAL ADVOKAT.

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Sweden has a dualist legal system, whereby international law must be ratified in domestic legislation. Constitutional principles prohibit tax without law and retroactive taxation (with rare exceptions). There are several sources within which to find guidance on international tax law:

- The Income Tax Act is the primary domestic source for income taxation. Other legislation may be relevant in both domestic and cross-border situations (such as the Withholding Tax Act, the Special Income Tax Act on Employment for Non-Residents (SINK), Swedish tax treaties, etc).
- Preparatory works, including the background, discussions and analysis behind a certain piece of legislation, are always published by the government. They provide a more detailed walk-through of the legislative process and the reasons for and criticisms of the proposed law.
- Case law, primarily from the administrative courts, provides guidance on the interpretation of the law. Precedents from the Supreme Administrative Court are binding.
- OECD publications, such as the Transfer Pricing Guidelines, provide guidance on the interpretation of domestic law.
- Doctrinemay also provide guidance on the interpretation of Swedish law.
- The Swedish Tax Agency (STA) provides extensive legal guidance based on its opinion on the interpretation of law. However, the STA guidance is not legally binding upon either the taxpayer or the STA, meaning that taxpayers may challenge STA opinions by proposing a different interpretation, and also that the STA may change its opinion at any time, with or without developments in tax legislation and/or case law.

1.2 Hierarchy of Sources

As mentioned in **1.1 Domestic Sources of International Tax Law**, international tax legislation must be ratified in order to be legally binding in Sweden. Since Sweden joined the EU, EU law generally has precedence over Swedish legislation.

With that said, international tax law sources such as OECD guidance and other similar sources may be used as bases for interpretation of the relevant tax legislation. This has, to a certain extent, been confirmed in case law. In a few cases from the Supreme Administrative Court, the Court has stated that, even though the OECD Transfer Pricing Guidelines are not legally binding for Swedish authorities, they provide such a well-balanced view on the relevant issues that they may be used as a basis for interpretation. The STA agrees with this view of the OECD Transfer Pricing Guidelines.

Sweden's tax treaties are incorporated into Swedish law. The tax treaties generally have precedence over other domestic legislation.

1.3 OECD Model/United Nations Influence on Treaty Practice

Sweden generally follows the OECD Model Tax Convention.

1.4 Multilateral Instrument

Sweden ratified the Multilateral Instrument (MLI) in 2018. The parts of the MLI that Sweden has chosen to apply are:

- Article 6 – Purpose of a Covered Tax Agreement;
- Article 7 – Prevention of Treaty Abuse;
- Article 16 – Mutual Agreement Procedure;
- Article 17 – Corresponding Adjustments;
- Articles 18–26 on Arbitration (Part VI); and
- the choice regarding the timing of application set out in Article 35 (3) – Entry into Effect, as explained below.

Although the MLI was approved, it did not automatically modify Swedish tax treaties upon its entry into force internationally on 1 July 2018. Under Sweden's dualist legal system, international agreements must be specifically incorporated into domestic law to be enforceable. This process requires legislative amendments to the individual acts that originally incorporated each bilateral tax treaty.

Sweden has specifically reserved the right regarding the "entry into effect" of the MLI (Article 35). As a result, modifications to a specific treaty only occur once Sweden's domestic implementation act for that treaty has been updated.

While Sweden has designated 64 "Covered Tax Agreements" (see Prop. 2017/18:61), modifications remain contingent on reciprocity; that is to say, the treaty partner must also designate Sweden as a covered jurisdiction. Consequently, the MLI provisions selected by Sweden will only take effect on a treaty-by-treaty basis following both mutual notification to the OECD and the completion of Sweden's internal legislative process.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

The Swedish general principles for territorial taxation are residence and source taxation. Tax residents are subject to unlimited tax liability on worldwide income. Non-residents are subject to Swedish taxation on Swedish-sourced income, eg, income from immovable property, withholding tax on dividends or business income related to a permanent establishment in Sweden.

2.2 Tax Residence of Individuals

An individual may be considered a Swedish tax resident based on (i) residence, (ii) permanent/habitual residence or (iii) significant connection to Sweden.

- *Residence:* Residence is primarily determined by registration in the Swedish population register but also includes individuals who normally spend their nightly rest in Sweden. In practice, people who are not registered are usually assessed under the rules on habitual stay, although exceptions may apply.
- *Habitual residence:* Under case law, a continuous stay of six months or more generally constitutes habitual stay in Sweden. The assessment considers the extent, regularity and duration of the stay, and recurring or regular visits may also qualify depending on the circumstances. For example, a stay for four months combined with additional shorter visits has been considered habitual residence, whereas a continuous stay of three months combined with up to 30 days or irregular visits has not.
- *Significant connection:* Significant connection is assessed based on the overall circumstances, including, for example, citizenship, previous residence in Sweden, housing, family, business activities, or ownership of or influence on Swedish companies. After leaving Sweden, substantial ties are presumed for five years, and the burden of proof to demonstrate otherwise lies with the individual.

An individual who does not qualify for Swedish tax residence is considered to be a limited taxable person.

2.3 Taxation of Resident Individuals

Swedish individual tax residents are taxed based on worldwide income unless exceptions may be found in, for example, domestic legislation or an applicable tax treaty.

An individual who is tax resident in Sweden may in some cases be relieved from employment taxation if the individual is employed abroad and:

- the employment and habitual residence abroad last more than six months and the income is taxed in the jurisdiction where the work takes place ("the six-month rule"); or
- the employment and habitual residence abroad last more than a whole year and the income is not subject to tax in the jurisdiction where the work takes place based on local law/practice or an agreement other than a double taxation agreement ("the one-year rule").

For an exemption to apply, the habitual residence abroad must be due to the employment. The employment must be of such a kind that the individual's presence is required in the jurisdiction where the work takes place.

2.4 Taxation of Non-Resident Individuals

Non-resident individuals are generally only taxed on Swedish-sourced income.

- *Special Income Tax on Employment for Non-Residents (SINK):* Non-residents are subject to a 22.5% tax on Swedish-sourced employment income (including, for example, pension, board remuneration, etc) unless a reduction applies. Reductions may vary based on the type of income and employment.
- *Income from immovable property:* Non-residents are subject to tax on rental income and/or capital gains for private and commercial properties (including apartments).
- *Property tax:* All owners of taxable real estate properties in Sweden are subject to property taxation in Sweden.
- *Withholding tax:* Sweden levies a withholding tax of 30% on dividends unless the tax rate is reduced under domestic legislation or an applicable tax treaty.
- *Ten-year rule for previous tax residents:* Non-residents who, during the current calendar year or ten previous calendar years, have been tax residents based on residence or habitual residence may be subject to tax in Sweden on capital gains from the divestment of shares. The current provisions cover capital gains from the sale of both Swedish and foreign shares, as well as shares acquired while residing in Sweden. They also apply to the sale of Swedish shares acquired after emigration but disposed of within ten years of leaving Sweden. The ten-year rule may be limited by provisions in tax treaties concluded between Sweden and other countries.

2.5 Tax Residence of Legal Entities

Registered Companies

Swedish companies are considered Swedish tax residents upon registration. No specific income tax registration is required. It should, however, be noted that many businesses elect to apply for a specific Swedish tax registration ("F-tax" ("*F-skatt*")) to assume responsibility to pay taxes on their own behalf; otherwise, the business's customers may be required to make tax payments on the business's behalf. It should also be noted that the mandatory withholding of taxes for EU entities with no permanent establishment in Sweden has been criticised on an EU level as a limitation upon the freedom to provide services, with a European Court of Justice ruling pending.

Companies not Registered in Sweden

If a company is not registered in Sweden, it can be deemed a tax resident if its highest company organ is operating in Sweden or in another relevant circumstance, such as Sweden being the place for the company's everyday business.

2.6 Definition of Permanent Establishment

Under the main rule, a permanent establishment is defined as a fixed place of business from which the business is wholly or partly carried on. Unless all three requirements (place, permanence, where business activities are carried out) are fulfilled, there is no permanent establishment in Sweden.

The definition is based on the OECD Model Tax Convention, but the Swedish definition also includes, for example, real estate that constitutes a current asset and shares in foreign subsidiaries.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

General

Immovable properties are subject to tax in Sweden regardless of whether the owner is a Swedish tax resident or not. The owners are subject to tax on rental income (business profit) and/or capital gains for private and commercial properties (including apartments).

Individual Property Owners

To assess whether rental income should be taxed as capital income or business income for individual property owners, it must be determined whether the rental income should be attributed to business activity or capital. "Business activity" means an income-generating activity that is conducted professionally (durably and with a profit motive) and independently. Holdings of business real estate and business co-operative apartments, as well as forest harvesting rights, are always considered business activity. If these requirements are not met, the income should be classified as capital income, ie, income based on the ownership of an asset rather than a business.

Divestment

The main rule is that a Swedish immovable property is a capital asset and that divestment is subject to capital gains taxation. If the property constitutes stock/inventory assets for accounting/tax purposes, the income may be recategorised as business profit.

Corporate Non-Residents

Corporate entities are only taxed for business income, regardless of the categorisation of the income for tax purposes. Hence, rental income is taxed as business income. Swedish immovable property generally constitutes a permanent establishment in Sweden and is taxed as such.

3.2 Business Profits

Business profits in Sweden are taxed in following ways:

- *General:* In general, the taxable result follows the commercial accounts, with a few exceptions, such as, for example, capital gains or dividends covered by the participation exemption (which are tax exempt), certain non-deductible expenses, and differences between accounting and tax depreciation for, for example, machinery and equipment.
- *Corporations:* A Swedish *Aktiebolag* (limited liability company) is only subject to business taxation. The business tax rate is 20.6%.
- *Individual business activity:* Business profits for an individual are allocated between employment income and capital gains taxation based on the amount of capital within the business.
- *Business income related to a permanent establishment in Sweden:* A foreign company with a permanent establishment in Sweden is taxed on income attributable to that permanent establishment and must pay income tax in Sweden. Whether a permanent establishment exists is determined under Swedish domestic law, with application of any relevant tax treaty with the state in which the company is resident. If the foreign company has a permanent establishment in Sweden which also qualifies as a Swedish branch, it is also required to fulfil accounting requirements.

3.3 Passive Income

Dividends and/or Interest to Tax Residents

Individuals

Dividends to individuals are generally taxed at 30%. However, the applicable tax rate may vary in several cases, such as:

- Shares held on an investment account (Sw: *Investeringssparkonto*, or ISK) or endowment insurance policy (Sw: *kapitalförsäkring*), which are taxed annually based on their total value rather than taxable events such as dividends or capital gains.
- Closely held companies (or founder-led companies), where distributions and/or capital gains are taxed in three categories: (i) low taxed amount – taxed at 20%; (ii) employment(maximum between SEK7 million and SEK8 million) – taxed between approx. 30% and 55%; and (iii) capital income – taxed at 30%. The low taxed amount is based on, for example, invested capital and paid salaries. The amount taxed as employment income is capped, meaning that any dividend exceeding the SEK7–8 million cap is taxed as regular capital income at 30%.

- Unlisted shares that are not in closely held companies or holdings/during the current year or previous four years have held more than 10% of the shares (votes or capital) in a market-traded company. Dividends (or capital gains) from such unlisted shares are subject to a 25% tax.

Corporations

Interest and dividends not covered by the participation exemption are taxed at 20.6%, unless held within an endowment insurance policy.

Dividends and/or capital gains may be tax exempt for a corporate shareholder if the shares are covered by the participation exemption. Shares held for business purposes are generally covered by the participation exemption if they are capital assets (ie, not current assets) and one of the following requirements is met:

- the shares are unlisted;
- the shares are listed and the recipient of the dividends owns at least 10% of the voting power of the payer for more than one year; or
- the shares are listed and the holding of the share is conditioned by the business conducted by the owning company, or by a company that, with regard to ownership structure or organisational circumstances, can be considered closely related to the owning company.

Withholding Tax

Dividends and interest

Sweden only levies withholding tax on dividends. The general withholding tax rate is 30%, which may be reduced or eliminated by domestic legislation or an applicable tax treaty. No withholding tax is levied on market-rate interest or repayment of principal. Interest exceeding fair market terms may be deemed a dividend and subject to withholding tax.

The main domestic exemptions for withholding tax are:

- if the dividend would be covered by the participation exemption if the receiving shareholder were Swedish; or
- if the recipient is covered by the Parent-Subsidiary Directive.

A recent development of the Withholding Tax Act will extend the exemption of withholding tax to include dividends to foreign states (within the EEA or a jurisdiction with which Sweden has entered a tax treaty or other agreement to exchange information on tax matters), and their equivalent to Swedish regions, municipalities and associations of municipalities, and other government authorities such as public pension institutions. Sovereign wealth funds owned by the state and state-controlled investment funds should also be covered.

Royalties

Sweden does not levy withholding tax on royalties paid by a Swedish resident company to a non-resident. However, royalties paid to a non-resident are considered as deriving from a Swedish business and are taxed as income from a permanent place of business in Sweden.

3.4 Capital Gains

General

Under Swedish rules, divestment/disposal of, for example, shares determines the taxable event regardless of when the seller is paid. This means that the taxable event generally occurs when a binding agreement has been signed by the parties, unless there are provisions creating a high level of uncertainty over the completion of the agreement. Consequently, a selling party may be subject to and liable to pay tax without receiving payment from the buyer.

Individuals

Capital gains are categorised (in some cases reduced based on a favourable tax rule) and added to the capital tax calculation. Capital losses are categorised (often reduced) and offset against the annual capital gains. Any difference exceeding zero is subject to a 30% capital gains tax. Losses up to SEK100,000 entitle the individual to a tax deduction. Losses exceeding SEK100,000 are only deductible up to 70% of the loss.

It should be noted that the specific tax rules for closely held companies also apply to capital gains.

Corporations
Capital gains on assets not covered by any exemption (such as the participation exemption) are taxed as business income, ie, at 20.6%.

3.5 Employment Income
For the Employer
The general rule is that employers pay "social security contributions" of up to 31.42% of their employees' total gross remuneration. Reduced rates may apply based on, for example, age, assignment (R&D), type of remuneration, etc. Gross remuneration and social security contributions are generally income tax deductible for the employer.

R&D
Reduced social security contributions may apply for employees working in qualifying areas of research and development. When calculating employer social security contributions and the general payroll tax on contribution-liable remuneration, a deduction shall be made of 20% of the contribution base for a person engaged in research or development. The deduction may not result in the contributions being reduced below the old-age pension contribution (10.21%).

A Swedish employer hiring local employees abroad would generally not be subject to Swedish social security contributions. However, the Swedish employer may be liable to pay similar taxes in the employee's residence state.

Foreign employers (ie, those with no permanent establishment in Sweden) engaged to provide foreign workers for a project in Sweden are required to register for F-tax in Sweden to avoid the Swedish contractor being required to withhold 30% of the invoiced amount to cover taxes on the foreign employer's behalf.

For the Employee
Sweden applies a progressive tax rate on employment income. To simplify somewhat, employment income up to SEK660,400 (for 2026) is subject to municipal tax of approx. 30–35%. Employment income exceeding this threshold will also be subject to a 20% state tax.

It should be noted that there are variations based on age and type of income.

Foreign non-resident employees hired to do work in Sweden are required to pay the Swedish special income tax for non-residents.

Expert tax
Employees who are not Swedish tax residents, have not resided or had habitual residence in Sweden during the five previous calendar years and have the intention to move to Sweden for a maximum of seven years to work for a Swedish employer (or a foreign employer with a permanent establishment in Sweden) may have the possibility to apply for expert tax, provided that their competence, assignment in Sweden and remuneration fulfil certain requirements.

3.6 Other Income
No additional information has been provided.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B
Sweden has not yet implemented Amount B. As the Amount B framework has been incorporated into the OECD Transfer Pricing Guidelines as an appendix, and Swedish case law has confirmed these Guidelines as a basis for the interpretation of relevant domestic tax rules, the Amount B framework still has influence over Swedish tax law, although it is not legally binding from ratification.

4.2 Pillar One – Amount A
Sweden usually welcomes OECD-based solutions to global tax issues. However, it could be argued that the reallocation under Amount A would negatively impact the Swedish tax base. This is because Sweden has a small population in relation to companies operating in the global market. By being forced to allocate profits to customers' jurisdictions, large Swedish companies will have to allocate less profits to Sweden.

4.3 Pillar Two
Sweden has implemented Pillar Two through domestic legislation, namely the Supplementary Tax Act. The law entered into force on 1 January 2024, although

the Undertaxed Profits Rule does not apply to any tax year initiated before 31 December 2024.

The implementation of Pillar Two is ongoing, and additional administrative guidelines from the OECD were implemented in 2024 and 2025.

4.4 Specific Features or Deviations of Pillar Two

The Swedish implementation of Pillar Two is remarkably faithful to the OECD Model Rules. This is largely because the Swedish law is based on the EU Minimum Tax Directive, which mandated a uniform transposition across EU member states. While the Directive aligns closely with the OECD Model Rules, it introduces a key deviation to ensure compliance with EU primary law – specifically, the freedom of establishment. Unlike the OECD framework, which targets cross-border groups, the Directive extends its scope to include large purely domestic groups. By treating domestic and cross-border structures identically, the Directive neutralises the risk of reverse discrimination, ensuring the regime withstands scrutiny under EU legal principles.

4.5 Digital Services Tax

Sweden has not implemented a specific tax on digital products, but there is a proposal to introduce a "streaming tax". The Swedish government is considering a series of proposals to revitalise the nation's film and TV production industry. The plans include a streaming levy programme whereby streamers must contribute annually to the development and production of films and TV series in Sweden. The financial contribution is proposed to be a fee of 1.5% of the turnover, with some exemptions, such as media providers with an annual revenue of less than SEK20 million.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

The Swedish Tax Avoidance Act is applicable to the majority of taxes in Sweden. Tax avoidance is generally defined as any arrangement whereby a taxpayer carries out one or more transactions primarily to obtain or avoid a particular tax effect.

The Tax Avoidance Act is applied by an administrative court upon the STA's request.

5.2 Anti-Avoidance Mechanisms

CFC Rules

Under Swedish controlled foreign corporation (CFC) rules, a domestic company is taxed on its pro-rata share of a foreign entity's profits if it controls at least 25% of the capital or voting rights at fiscal year-end. An entity is "low-taxed" if its effective tax rate, calculated by Swedish standards, falls below 11.33%. This charge is waived for entities on the "approved list" of jurisdictions, provided that they are treaty-eligible where applicable.

Interest Deduction Limitation Rules

Sweden has implemented several interest deduction limitations.

Targeted interest deduction limitation

The targeted interest deduction limitation rules restrict the possibility to deduct interest expenses paid to an affiliated company unless the true recipient is tax resident within the EEA,in a jurisdiction covered by a double taxation agreement, or if the interest income is taxed at a rate of at least 10%. Deduction may, however, be denied if the debt structure has been created exclusively in order to achieve a substantial tax benefit. In order to obtain deductibility, interest derived from an internal transfer of shares or share-based instruments must be business-related.

Under the targeted interest deduction limitation rules, corporate limited partners of a limited partnership in a GP structure may collectively be viewed as companies affiliated with the debtor, which may lead to the denial of interest deductibility. Individuals may not be viewed as an affiliated party under the targeted interest deduction rules.

Deduction limitation in an intragroup transaction

If a debt to an affiliated company relates to the acquisition of a shareholding from another affiliated entity,

a deduction may only be granted if the acquisition is essentially commercially justified.

Deduction limitation for net interest expenses

Net interest expenses surviving the targeted interest deduction regime are also limited to certain amounts. There are two applicable rules:

- *Safe harbour rule:* Under which net interest expenses up to SEK5 million on a group level are deductible.
- *Earnings stripping rules:* Under which a company's net interest expenses are deductible up to 30% of the tax EBITDA.

Under the earnings stripping rules, net interest expenses exceeding the maximum deduction may be carried forward for six years. However, any interest expenses carried forward are lost in the event of a change of control.

Shell Company Rules

The divestment of a shell company (Sw:*Skalbolag*), that is to say, a company that has no business operations and consists primarily of liquid assets, may be subject to capital gains tax in Sweden even if the shares in it qualify for participation exemption. There are exceptions for minority shareholders and internal transactions. The rules only apply to the transfer of Swedish tax residents (including, for example, companies with registered branches or that own shares in Swedish subsidiaries).

The rules regarding shell company taxation are mechanical, and although there are exceptions to shell company taxation, it is generally advisable to submit a specific shell company tax return (*Skalbolagsdeklaration*) within 60 days of the transfer to avoid the risk of capital gains taxation on the transferred shares.

5.3 Blacklists and Non-Cooperative Jurisdictions

Sweden generally uses the European Council's list of non-cooperative jurisdictions for tax purposes.

Transactions involving entities located in blacklisted jurisdictions may lead to, for example, denial of interest deduction, DAC6 reporting, withholding tax being imposed or the CFC rules applying.

5.4 Reporting Obligations and Disclosure Regimes

Sweden has implemented the DAC6 Directive. This requires tax intermediaries (lawyers, accountants, banks) to report "cross-border arrangements" to the STA if the transaction exhibits certain "hallmarks" of aggressive tax planning. Failure to report can lead to significant administrative fines.

5.5 Role of Tax Authorities and Enforcement Measures

Investigations into possible tax fraud may be led by the STA or the Swedish Economic Crime Authority (ECA), whereby the STA performs administrative audits and the ECA pursues criminal investigations. Both the STA and the ECA have extensive authority to access records, both from the taxpayer within the scope of the investigation and from third parties. Audits may be general or targeted.

Unannounced Visits

The STA often shows up unannounced in order to investigate, for example, cash registers and whether all staff members are properly registered.

Raids

Depending on whether the investigation is being conducted by the STA or ECA (criminal procedure), different rules granting different levels of authority apply. Under the Tax Procedure Act, the STA may apply to an administrative court for permission to search business premises to seize documents or digital data if there is a risk that a taxpayer will hide or destroy evidence. If the investigation is led by the ECA, raids may be performed in co-operation with prosecutors and police officers. There is no limitation as to what may count as business premises – a raid can be made at, for example, a private home.

6. Penalties and Sanctions

6.1 Tax Penalties

The STA may impose tax penalties of up to 40% of the unpaid taxes if an error is based on incorrect declaration of income or if no tax return has been submitted.

6.2 Criminal Penalties

There are three main levels of tax crime in Sweden: minor misdemeanour (Sw:*ringa skattebrott*), regular tax crime (Sw:*skattebrott*) and aggravated tax crime (Sw:*grovt skattebrott*). The penalty for a minor misdemeanour never exceeds a fine. A regular tax crime may lead to a prison sentence of up to two years. For an aggravated offence – for instance, if the accused submitted fake evidence or if the amount exceeds approx. SEK0.6 million – the maximum penalty is six years in prison.

6.3 Interaction Between Tax and Criminal Procedures

No tax penalties may be levied if criminal procedures are considered. Hence, the STA would not make any claim for tax penalties if a criminal prosecutor plans to pursue criminal charges. If the STA were to impose tax penalties, that would be regarded as a punishment blocking a criminal prosecutor from pursuing criminal charges under the principle of ne bis in idem (double jeopardy).

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

Sweden is a member of the EU, which comes with certain obligations to comply with EU legislation. Binding EU law supersedes Swedish internal law based on these obligations.

All tax treaties are passed as domestic law.

OECD ModelTax Conventions may be used as a basis for interpretation of relevant domestic law.

7.2 Exchange of Information Clauses in Tax Agreements

All tax treaties entered into by Sweden, with the exception of the Nordic Tax Treaty where a specific agreement has been entered into that covers the exchange of information, include an article regarding the exchange of information. The majority of their articles are based on previous versions of the OECD Model Tax Convention.

Sweden does not have any tax treaties supporting the automatic exchange of information. However, it should be noted that automatic exchange of information has been agreed with the United States in the Sweden–US FATCA agreement. The automatic exchange of information covers financial accounts and country-by-country reporting.

7.3 Other Forms of International Tax Collaboration

No additional information has been provided.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

A taxpayer may request a mutual agreement procedure (MAP) from the STA if they believe they are being taxed incorrectly under a tax treaty or taxed twice on the same income in different countries. The STA is the competent authority and negotiates with the foreign tax authority to resolve the issue based on Article 25 of the OECD Model Tax Convention. The purpose of the MAP is to eliminate double taxation, but tax authorities are not obligated to reach an agreement, unless specific treaty provisions require arbitration.

8.2 Application Deadlines

According to most tax treaties, an application for a MAP must be filed within three years from the time the taxpayer became aware of the action causing taxationcontrary to the treaty. Similar time limits apply under the EU Arbitration Convention and EU dispute resolution rules. Applying early is often recommended to avoid limitation periods in the other country.

8.3 Mandatory Binding Arbitration

The STA promotes the use of so-called "preliminary discussions" for the clients of the Large Taxpayers' Office, ie, mainly companies belonging to a larger group. With respect to the tax treatment of the transaction, the taxpayer is normally, in the preliminary discussions, advised to apply for an advance tax ruling from the Council for Advance Tax Rulings (Sw:*Skatterättsnämnden*).

9. Dispute Prevention

9.1 Advance Pricing Agreements

Bilateral or multilateral advance pricing agreements (APAs) can applied for from the STA for a fee between SEK100,000 and SEK150,000. Sweden does not provide unilateral APAs. It is generally required that Sweden has a tax treaty with the other relevant jurisdictions.

Businesses may apply for an APA regarding future intragroup transactions for income tax purposes. The application must include sufficient information, and the transactions must be significant and capable of being assessed independently. A pre-filing meeting with the competent authority is possible.

An APA is binding for the STA in relation to the transactions covered if its conditions are met, but it may be amended or revoked in certain circumstances.

9.2 Other Mechanisms

No additional information has been provided.

Trends and Developments

Contributed by:
Christoffer Dahl, Niclas Söderlund, Michel Weimer and Björn Mårtensson
XR Legal

XR Legal is an independent business law firm with a particular focus on tax law issues. The lawyers have many years of experience with both Swedish and international issues, giving them the opportunity to provide clear tax advice and recommendations. Through its well-established network of contacts in Sweden and abroad, it offers specialist expertise in all areas of business law.

Authors

Christoffer Dahl has been working with tax matters since 2019. He began his career focusing primarily on income tax issues for owner-led companies. He then proceeded to work with domestic and cross-border M&A transactions and restructurings with a diverse range of clients, including private equity firms and large corporations. Christoffer is the latest addition to XR Legal, and he advises on a wide spectrum of income tax matters across various industries and client types.

Niclas Söderlund at XR Legal has more than 25 years of experience working with tax matters. He has been Head of Tax at some of Sweden's largest companies, most recently AB Electrolux and Telia Company AB. He has gained extensive experience in general and international corporate tax matters, dispute resolution and litigation. Niclas has background from the Administrative Court of Appeal and has previous experience from working at law firms since 2019. He also assists clients on real estate matters, structuring and financing real estate projects. Niclas Söderlund is a member of the Swedish Bar Association.



Michel Weimer at XR Legal has been dealing with tax law for more than 15 years, primarily regarding Swedish and international personal and corporate taxation. He has experience and expertise in cross-border restructurings and establishing companies in Sweden or abroad, and in helping individuals to move to or from Sweden. Michel also has many years of experience of transfer pricing and assisting multinational corporate groups with structuring and implementing intragroup transfer pricing models, as well as preparing relevant intragroup transfer pricing documentation. Michel also has detailed knowledge of the tax rules concerning owners/entrepreneurs with "closely held companies" (Sw: Fåmansföretag). Michel Weimer is a member of the Swedish Bar Association.



Björn Mårtensson at XR Legal has been involved with tax cases since 1990, mainly assisting Swedish and international companies and their owners regarding income tax matters. Björn has gained considerable experience over the years and has worked in practically every area of income tax law. He has also built up an extensive knowledge of problems and opportunities in other tax areas, such as VAT, civil law and accounting. His strengths lie in dealing with income tax matters concerning transactions, restructuring and incentive programmes in medium-sized and large owner-managed companies and companies with an international focus. Björn Mårtensson is a member of the Swedish Bar Association.

Contributed by: Christoffer Dahl, Niclas Söderlund, Michel Weimer and Björn Mårtensson, **XR Legal**

XR LEGAL ADVOKAT AB

Västra Trädgårdsgatan 6A,
111 53 Stockholm

Tel: +46738043399
Email: Christoffer.dahl@xrlegal.se
Web: Xrlegal.se

XR LEGAL ADVOKAT.

Discussions Regarding Interest Deduction Limitations

The Swedish interest deduction limitation legislation has been under fire since its first implementation. The criticism has mainly concerned the unpredictability of the targeted interest deduction limitation rules.

The criticism initiated the launch of an investigation to propose relevant amendments. The investigation was published in 2024 and included, for example, proposals to align with EU freedom of establishment rules, to update the targeted interest deduction rules to make the legislation more predictable, to increase the "safe harbour" amount from SEK5 million to SEK25 million, to extend the possibility to carry net interest expenses forward indefinitely and to calculate net interest expenses on a group level rather than an entity level. However, the proposal was only implemented to avoid conflict with the EU.

Implemented changes

On 1 January 2026, the components concerning the targeted interest deduction limitation rules were implemented primarily to avoid further conflict with EU law. The key implementation was the new provision for loans within the European Economic Area (EEA). Instead of the previous strict requirement that a loan must be "substantially motivated by commercial reasons", a narrower exception was introduced. Deductions within the EEA can now only be denied if they involve a purely artificial arrangement. In practice, this represents a reduced evidentiary burden for companies, as the Swedish Tax Agency (STA) now faces a higher threshold for denying deductions on cross-border loans within Europe.

For loans from countries outside the EEA (eg, the United States or Switzerland) and for purely domestic Swedish loans, no reliefs were implemented. The stricter rules remain in effect, where deductions can be denied if the primary purpose is to obtain a significant tax benefit. This bifurcation of the regulatory framework is now a permanent feature of Swedish tax law.

Discarded proposals

- *General rules (EBITDA-based rule):* The greatest disappointment for the business community was that the proposed reliefs for the general rules were not implemented on 1 January 2026, despite being included in earlier drafts.
- *The "safe harbour" amount remained at SEK5 million:* The inquiry proposed a sharp increase in the "safe harbour" amount from SEK5 million to SEK25 million. This was not implemented. Consequently, companies/groups with interest expenses exceeding SEK5 million must still undergo the complex EBITDA-based deduction calculation.
- *No group consolidation (calculation units):* A highly anticipated proposal was the introduction of "calculation units", which would allow corporate groups to offset interest surpluses against interest deficits between different entities more easily. This proposal was shelved for budgetary reasons and is not part of the legislation applicable from 2026.
- *Time limit for remaining net interest:* The government also chose to retain the six-year time limit for carrying forward unutilised interest deductions. The inquiry's proposal to abolish this time limit – aimed at creating more predictability for investment-heavy sectors such as real estate and infrastructure – did not become reality.

Our hope is that the discarded rules are picked up again and implemented as of 1 January 2027.

New Proposal to Stimulate R&D Investments

A report to suggest new rules to stimulate research and development (R&D) investments in Sweden was released in February 2026. The report presents two alternative tax incentive proposals designed to stimulate R&D investment by companies: a super-deduction and a refundable tax credit. Both proposals are accompanied by legislative text, commentary and impact assessments. Since the two alternatives have different advantages and may benefit different types of companies, the inquiry does not recommend one over the other.

Both incentives are intended to be available to all business operators and are designed to comply with EU law, including rules on freedom of establishment and state aid. The incentives are calculated based on R&D-related staff expenditure and will therefore primarily apply to entities that incur such costs, typically legal persons.

Under both proposals, qualifying expenditures are limited to salaries, fees, benefits and other remuneration for staff engaged in R&D work. The work must also be carried out within the EEA. Staff costs were selected as the basis for the incentives because they represent the largest component of R&D spending across sectors and company sizes. Limiting the base to staff expenditure would also simplify the rules, increase predictability and reduce administrative complexity. Expanding the base to include other costs such as equipment or external services would make the system more complex and increase its fiscal cost.

Although the aim of the incentives is to stimulate R&D activity in Sweden, EU law prevents restricting eligibility to work performed exclusively in Sweden. The proposals therefore limit qualifying work to activities carried out within the EEA, which is compatible with EU law while still enabling effective monitoring and control.

The definition of R&D under both proposals would follow the definitions currently used in the Act on special allowances on employers' social security contributions and payroll tax for individuals working in research or development (2023:747). Aligning the definitions across the existing and proposed incentives is intended to make the rules easier and more predictable for companies conducting R&D.

Under the super-deduction proposal, companies would be allowed an additional deduction equal to 200% of qualifying expenditures. Together with the ordinary deduction for salary costs, this would result in a total deduction equal to 300% of the relevant R&D staff costs. For companies subject to corporate income tax, this corresponds to tax relief of approximately 41.2% of those costs. The super-deduction would be optional and claimed in the company's income tax return. The proposal would require the introduction of a new provision in the Income Tax Act but no additional procedural rules.

The alternative proposal is a refundable tax credit equal to 20% of qualifying expenditures. The credit would be applied after other tax reductions and offset against income tax and certain other taxes. If the calculated credit exceeds the company's tax liability, the remaining amount would be recorded as a credit balance and credited to the company's tax account, from which it could be paid out. Both the tax credit and any payment would be tax-exempt.

The refundable tax credit would also be optional and claimed in the income tax return. Implementing this proposal would require amendments to the Income Tax Act as well as new procedural provisions in the Tax Procedure Act (Sw:*skatteförfarandelagen*).

Finally, the report recommends that whichever incentive is implemented should be followed up and evaluated approximately two years after its introduction.

Modernisation of Swedish Withholding Tax Legislation

On 22 January 2026, the Swedish government resolved to appoint an inquiry tasked with drafting modernised legislation for withholding tax on dividends. This initiative is driven by the necessity to implement the FASTER Directive on withholding tax procedures and the recognition that the current Swedish framework – primarily, the "coupon tax" (Sw:*kupongskatten*) – is

overly complex, administratively burdensome and susceptible to tax evasion.

The primary aim is to establish a more efficient, legally secure and competitive system that facilitates cross-border investment within the EU. Key focuses include:

- *Streamlining procedures:* Simplifying and accelerating the process for obtaining withholding tax relief or refunds.
- *Combating abuse:* Strengthening safeguards against tax evasion and aggressive tax planning.
- *Digital integration:* Aligning regulations with modern, standardised digital management practices.

The inquiry will go beyond a mere transposition of EU law. The investigator is tasked with a comprehensive overhaul of the entire regulatory framework, including:

- *Substantive rules:* Reviewing tax liability and applicable tax rates.
- *Administrative reform:* Integrating these regulations into the Tax Procedure Act to ensure consistency.
- *Legislative proposals:* Delivering complete draft legislation for the proposed reforms.

The final report and legislative proposals are due by 13 August 2027. This initiative represents a fundamental reform intended to increase transparency, efficiency and simplicity within the Swedish dividend withholding tax system.

Policy Activism

In recent years, the STA has been subject to increasing criticism concerning policy activism (Sw:*myndighetsaktivism*), mainly from tax lawyers, businesses and politicians, but also from the EU and oversight bodies.

Policy-by-litigation or policy-by-law

The STA's litigation strategy has come under fire due to its determination to continually pursue legal positions despite limited support from law and previous court rulings. This is perceived as an attempt to influence case law and test the boundaries of current law.

Persecution without legal basis

It is claimed that the STA is pursuing normative policy goals rather than enforcing the existing tax law. For instance, the STA has targeted "legal tax planning". In 2018, the STA stated that its programme "Skattedrivna företeelser" aims to counter and reduce tax evasion, tax avoidance schemes and certain forms of tax planning. The programme description for AISS (Serious International Tax Avoidance and Tax Schemes) also argued that even fully legal tax planning can have negative effects if it undermines trust in the tax system or reduces taxpayers' willingness to comply. The STA indicated that the programme's actions should be actively communicated in co-operation with its communications department, including through a structured media plan. Although the special workgroup AISS engaged to achieve the STA's goals was abolished in 2025, the criticism remains. The central objections are that the Tax Agency occasionally pursues aggressive or extensive legal interpretations aimed at countering tax planning and strengthening control over the tax base. Critics argue that the STA is attempting to establish new norms through litigation rather than neutrally applying existing legislation.

Defenders of the STA, however, argue that the increased complexity of taxation requires active legal application and strategic litigation to clarify the legal landscape and ensure effective taxation.

In summary, the debate centres on where the line should be drawn between the STA's mission to efficiently collect taxes and the need for legal certainty (Sw:*rättssäkerhet*) for taxpayers.

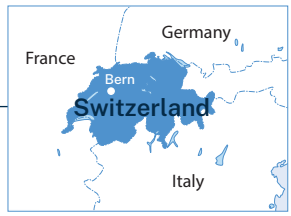
The 125% tax case

Additional criticism concerns proportionality and legal certainty in individual cases, where the totaltax effects are sometimes deemed disproportionate to the actual income or transaction in question. In an ongoing case, the STA has levied a total tax of 125% upon a single taxpayer, leading to major criticism by lawyers, politicians and the media.

Confidentiality issues

Discussions have also taken place regarding the STA's handling of confidentiality, taxpayer data and the principle of public access, specifically concerning the balance between efficient tax collection and legal certainty.

SWITZERLAND



Law and Practice

Contributed by:
Joseph Merhai, Thomas Pasquier and Laurent Schenker
Aegis

Contents

1. Sources and Principles p.461
1.1 Domestic Sources of International Tax Law p.461
1.2 Hierarchy of Sources p.461
1.3 OECD Model/United Nations Influence on Treaty Practice p.462
1.4 Multilateral Instrument p.462

2. Territoriality, Residence and Permanent Establishment p.462
2.1 General Principle of Territorial Taxation p.462
2.2 Tax Residence of Individuals p.462
2.3 Taxation of Resident Individuals p.463
2.4 Taxation of Non-Resident Individuals p.463
2.5 Tax Residence of Legal Entities p.464
2.6 Definition of Permanent Establishment p.465

3. Taxation of Cross-Border Income p.465
3.1 Income From Immovable Property p.465
3.2 Business Profits p.466
3.3 Passive Income p.466
3.4 Capital Gains p.467
3.5 Employment Income p.467
3.6 Other Income p.467

4. OECD/G20 Global Tax Reform p.467
4.1 Pillar One – Amount B p.467
4.2 Pillar One – Amount A p.467
4.3 Pillar Two p.468
4.4 Specific Features or Deviations of Pillar Two p.468
4.5 Digital Services Tax p.468

5. Anti-Avoidance and Anti-Evasion Measures p.468
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.468
5.2 Anti-Avoidance Mechanisms p.469
5.3 Blacklists and Non-Cooperative Jurisdictions p.470
5.4 Reporting Obligations and Disclosure Regimes p.470
5.5 Role of Tax Authorities and Enforcement Measures p.471

6. Penalties and Sanctions p.471
6.1 Tax Penalties p.471
6.2 Criminal Penalties p.472
6.3 Interaction Between Tax and Criminal Procedures p.472

7. Administrative Co-Operation p.473
7.1 Legal Framework for Administrative Co-Operation p.473
7.2 Exchange of Information Clauses in Tax Agreements p.473
7.3 Other Forms of International Tax Collaboration p.474

8. Mutual Agreement Procedures and Arbitration p.474
8.1 Availability and Legal Basis p.474
8.2 Application Deadlines p.474
8.3 Mandatory Binding Arbitration p.474

9. Dispute Prevention p.474
9.1 Advance Pricing Agreements p.474
9.2 Other Mechanisms p.475

Aegis is a highly specialised Swiss business law firm that advises domestic and international clients on banking and finance, corporate and tax matters, and also acts on dispute resolution. Aegis' tax team advises on cross-border structuring, inbound and outbound investments, treaty-related questions and the tax aspects of international mobility and estate planning, and is recognised for its dual focus on venture capital transactions and private client advisory work. Aegis is active in the Swiss and international venture capital ecosystem, advising prominent VC firms, institutional investors, entrepreneurs and technology-driven businesses; it also advises (ultra) high net worth individuals, family offices and private holding structures on complex cross-border tax and succession matters. Key areas of work include tax structuring for domestic and cross-border M&A, fund formation and GP/LP structuring, financing instruments, employee participation plans, tax audits and litigation, tax-efficient holding and real estate structures, and international estate and succession planning.

Authors



Joseph Merhai is a partner at Aegis and head of the tax department. He specialises in corporate tax law, international tax planning, M&A, and strategy and transfer pricing. He represents individuals and companies in tax law and tax criminal law matters. Joseph has extensive experience in banking tax law and the taxation of investment structures (collective investment schemes and wealth structures) and commodity trading companies. He serves on the board of directors of several companies, and is ranked in both Chambers Global and Chambers Europe.



Thomas Pasquier specialises in all areas of Swiss and international tax law. His expertise includes tax advice for investment funds and businesses at all stages of their development, such as incorporation, financing rounds, management buyouts, exits and restructurings. He advises entrepreneurs and private clients on all their tax matters, including relocation to Switzerland, philanthropic activities, real estate investments, business transfers, and estate and succession planning. Thomas also represents clients in tax proceedings (contentious or non-contentious) before administrative authorities and courts, at both the cantonal and federal levels.



Laurent Schenker specialises in Swiss and international tax law, advising both individuals and corporate entities. He provides advice particularly to young companies and entrepreneurs, and to private clients on matters of wealth and estate planning. Laurent represents clients before Swiss administrative authorities and courts in the context of advance tax rulings and contentious tax procedures.

Contributed by: Joseph Merhai, Thomas Pasquier and Laurent Schenker, **Aegis**

Aegis

Rue du Général-Dufour 20
1204 Geneva
Switzerland

Tel: 022 703 51 00
Email: info@aegis.ch
Web: aegis.ch



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

Swiss international tax law is primarily based on Switzerland's network of double taxation agreements (DTAs) and other bilateral or multilateral agreements, as interpreted and applied under Swiss domestic tax legislation, and complemented by administrative practice and case law.

Switzerland is a federal state. Taxes are levied at federal, cantonal and communal levels; accordingly, cross-border matters are covered by a combination of federal acts, the relevant cantonal provisions and potential applicable international treaties, depending on the case at hand.

Swiss international tax law also includes domestic conflict rules and unilateral mechanisms to eliminate international double taxation. In practice, administrative guidance (including circulars and safe harbour practices, notably in areas such as thin capitalisation and interest rates in intra-group financing) and the case law of the Swiss Federal Supreme Court (SFSC) are key for the interpretation and application of these rules.

As of March 2026, Switzerland has DTAs with over 100 countries, mainly covering taxes on income and wealth/capital. A limited number of DTAs do not cover wealth/capital tax. Switzerland also has a limited treaty network for inheritance and estate taxes (currently eight agreements). In addition, the cantons may conclude treaties with foreign states in areas falling within their areas of competency. In practice, a limited number of cantonal agreements exist in international tax matters, notably in relation to international inheritance taxation or gifts made to public-benefit institutions, and the taxation of cross-border workers.

With respect to internationally recognised standards, OECD publications, reports and guidelines are commonly used as an interpretative tool by administrative authority and courts, especially where Swiss law applies treaty concepts (eg, in transfer pricing).

1.2 Hierarchy of Sources

Switzerland applies a monist approach, meaning that, once validly ratified, international law (in particular, DTAs) forms part of the domestic legal order and is, as a rule, applied by the Swiss authorities without requiring a separate act of implementation.

According to the Swiss Federal Constitution (SFC), both the Confederation and the cantons must respect international law, including treaties and DTAs. The Constitution also provides that the SFSC and other authorities are required to apply both international law and federal laws. Treaty provisions are applied directly to the extent they are sufficiently clear and precise (self-executing); where this is not the case, implementing legislation is required.

As a rule, domestic law is interpreted in a treaty-conform manner; where a conflict cannot be resolved by interpretation, international law generally prevails. This reflects the obligation to interpret treaties in good faith (pacta sunt servanda, Article 26 of the Vienna Convention on the Law of Treaties), while Swiss case law recognises limited exceptions in specific constellations.

DTAs typically have a "negative" effect only: they restrict and allocate taxing rights between the contracting states to avoid double taxation but do not, in themselves, create a tax liability. Taxation in Switzerland therefore always requires a legal basis in Swiss domestic law.

1.3 OECD Model/United Nations Influence on Treaty Practice

In Switzerland, treaty practice is essentially based on the OECD Model Tax Convention (OECD MTC). Switzerland has been a member of the OECD since its creation, and most Swiss DTAs follow the OECD MTC in terms of structure and core concepts.

Even if the OECD MTC and the OECD Commentary are not formal sources of law, they are widely used as interpretative guidance for the application of Swiss DTAs. This guidance is reflected in federal and cantonal administrative practices, and is regularly mentioned in case law.

The UN Model does not drive Swiss treaty policy. Elements that are more typical for UN-oriented treaties may nevertheless be found in individual agreements, depending on the treaty partner and the negotiated balance of taxing rights.

In Switzerland's tax treaty network, there are no systematic deviations from the OECD MTC. Rather, deviations are treaty-specific and can concern:

- the scope of covered taxes;
- residual withholding tax rates and specific source-state taxing rights; and
- the inclusion of specific anti-abuse and administrative assistance/exchange of information provisions, which have been increasingly aligned with BEPS minimum standards through protocols and treaty updates.

1.4 Multilateral Instrument

Switzerland signed the Multilateral Instrument on 7 June 2017 and deposited its instrument of ratification on 29 August 2019. The MLI entered into force for Switzerland on 1 December 2019.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

In Switzerland, the territorial scope of taxation is determined by the distinction between unlimited tax liability based on a personal connection and limited tax liability based on an economic connection.

Individuals who have their tax residence in Switzerland (domicile or "tax relevant stay" – see **2.2 Tax Residence of Individuals**), and legal entities whose registered seat or place of effective management is in Switzerland (see **2.5 Tax Residence of Legal Entities**), are in principle subject to unlimited tax liability and are taxed on their worldwide income/profits and wealth/capital, subject to the usual limitations and relief for certain foreign items (eg, foreign permanent establishments and foreign immovable property).

By contrast, persons and entities without such personal affiliation are subject to limited tax liability and are taxed only on Swiss-source income and assets to the extent a sufficient Swiss nexus exists (typically Swiss-based real estate, a Swiss permanent establishment or business operation, or other taxable Swiss-source items).

Switzerland's structure as a federal state is an important feature of taxation. As taxes are levied at federal, cantonal and coaligned levels, the effective tax burden largely depends on the canton and municipality of residence or seat, despite the fact that the conditions to determine unlimited and limited tax liability are mostly aligned.

2.2 Tax Residence of Individuals

Domestic Provision

From a domestic standpoint, individuals' tax residence in Switzerland (unlimited tax liability) is triggered if they are domiciled in Switzerland or have a "tax-relevant stay" in Switzerland.

A person is considered to be domiciled in Switzerland for tax purposes if they reside in Switzerland with the intention of remaining there on a durable basis. This assessment is based on objective circumstances; a tax domicile may also arise from a special legal

domicile provided for under federal law. If the situation is not clear, the tax authorities determine the tax domicile by reference to the strongest personal and economic ties (centre of vital interests), based on an overall assessment of the facts; purely subjective preferences are not decisive in themselves.

A stay in Switzerland triggers tax residence when the individual remains physically in Switzerland for at least 30 days while engaging in gainful activity, or for at least 90 days without gainful activity, without significant interruption.

Treaty Provision

Where an individual is treated as being tax resident in Switzerland and in another jurisdiction under its respective domestic rules, the applicable DTA will typically resolve the conflict through the tie-breaker rules of Article 4 of the OECD MTC.

In principle, the individual is deemed to be resident only of the state where they have a permanent home available; if a permanent home is available in both states, residence is assigned to the state with which personal and economic relations are closer (centre of vital interests). If the centre of vital interests cannot be determined (or if no permanent home is available in either state), the tie-breaker rule turns to habitual abode, then nationality, and ultimately a mutual agreement between the competent authorities.

2.3 Taxation of Resident Individuals

Unlimited Tax Liability

Individuals who are tax resident in Switzerland are, as a rule, subject to unlimited tax liability and are taxed on their worldwide income for purposes of direct taxes at the federal, cantonal and communal levels. In addition, they are generally subject to cantonal and communal wealth tax on their worldwide net wealth.

Exemption Mechanism

Domestic Swiss law and DTAs provide for mechanisms to avoid international double taxation. For example, income attributable to foreign businesses/permanent establishments and income from immovable property located abroad are generally excluded from Swiss taxation, although they must typically still be declared and taken into account to set the tax rate.

For other categories of foreign-source income, relief is typically granted under the applicable DTA (and, in some cases, under domestic unilateral relief rules), usually by way of exemption or, more rarely, foreign tax credit, depending on the income category and the relevant treaty provisions.

Lump Sum Taxation

Swiss tax law also allows individual taxpayers to voluntarily opt for a lump sum taxation (*imposition d'après la dépense/Besteuerung nach dem Aufwand*). In principle, this regime is available only to individuals who:

- do not have Swiss citizenship;
- become Swiss tax residents for the first time or after an absence of at least ten years; and
- do not carry out any gainful activity in Switzerland.

Under this regime, income tax is assessed based on the taxpayer's annual living expenses (including those incurred abroad for the taxpayer and dependants), subject to statutory minimum bases and a control calculation. Cantonal law and practice may impose lower or higher minimum assessment bases, and certain cantons have abolished this regime altogether.

2.4 Taxation of Non-Resident Individuals

Domestic Provision

Under Swiss domestic tax laws, individuals who, for Swiss tax purposes, are neither domiciled nor tax-resident by virtue of a stay in Switzerland are subject to Swiss taxation only based on an economic affiliation. This generally covers both (i) business or real-estate nexus and (ii) certain specifically listed Swiss-source income.

A taxable economic affiliation exists where:

- the individual is the owner or usufructuary of a business in Switzerland, or holds an interest therein as a partner;
- the individual operates a permanent establishment in Switzerland;
- the individual owns Swiss real estate or holds rights in rem, or personal rights economically equivalent to rights in rem, over Swiss real estate; or

- the individual trades in Swiss real estate or acts as an intermediary in Swiss real estate transactions.

Limited tax liability also arises where the individual derives certain Swiss-source income, notably where:

- they carry on gainful employment or self-employment in Switzerland;
- they are employed by an employer with its seat, place of effective management or a permanent establishment in Switzerland and Switzerland is granted taxing rights over work performed abroad under the relevant cross-border treaty arrangement;
- they receive directors' fees or similar remuneration as members of the board or management of a legal entity having its seat or a permanent establishment in Switzerland;
- they are the holder or usufructuary of receivables secured by a mortgage or pledge over Swiss real estate;
- they receive pensions or similar benefits linked to a public law activity carried out for the account of third parties from a Swiss employer or Swiss pension institution;
- they receive income from Swiss private law institutions connected with occupational pension provision or recognised forms of tied individual pension provision; or
- they receive remuneration for activities in international traffic (ship, aircraft or road transport) from an employer with its seat, place of effective management or permanent establishment in Switzerland, subject to the statutory exemption for seafarers on Swiss-flag vessels operated by such an employer.

In addition, some cantons levy a distinct tax on the sale of immovable property (see **3.1 Income From Immovable Property**).

Domestic Taxation Procedure

The method used to levy Swiss taxes usually depends on the nature of the income. Employment income is frequently collected by way of tax at source (*imposition à la source, Quellensteuer*) where the employee is not tax resident in Switzerland (and in some cases for foreign nationals resident in Switzerland), with subsequent ordinary assessment only in cases provided for by law. By contrast, income derived from Swiss permanent establishment or from Swiss-based real estate is generally assessed under the ordinary assessment procedure, and the taxpayer must submit a complete Swiss tax return.

Treaty Provision

In addition to the domestic rules, the applicable tax treaty provision should also be analysed, as the scope of Swiss taxing rights is often limited by said applicable DTA. In particular, treaties may:

- require the existence of a permanent establishment for Switzerland to tax business profits;
- allocate employment income based on the place where the work is physically performed (subject to specific treaty exceptions, such as short-term assignments); and
- restrict or cap Swiss taxation on certain Swiss-source items, or oblige Switzerland to grant relief from double taxation where Switzerland's domestic law would otherwise tax the income.

2.5 Tax Residence of Legal Entities

Under Swiss tax law, a legal entity is generally regarded as being tax resident in Switzerland if either its statutory seat (ie, the place of incorporation/registration) or its place of effective management is in Switzerland.

The place of effective management is determined based on the factual circumstances. According to case law from the SFSC, it corresponds to the place where the entity's actual and economic centre of activity is carried out (ie, where its day-to-day business is directed and/or where management decisions are effectively taken) rather than where purely formal functions are performed.

By contrast, transparent entities (notably partnerships) are not treated as separate taxpayers for corporate income tax purposes; the tax nexus is generally assessed at the level of the partners rather than at entity level.

2.6 Definition of Permanent Establishment

Domestic Definition

Swiss domestic tax law contains an express definition of a permanent establishment. In principle, a permanent establishment is a fixed place of business through which the business activity of an enterprise (or the activity of a person exercising an independent profession) is performed in whole or in part. The statutory examples include a place of management, a branch, a factory, a workshop, a sales office, a permanent representation, a mine or other place of extraction of natural resources, and a building site or construction/installation project that continues for at least 12 months.

Treaty Provision

In cross-border situations, the applicable DTA definition of permanent establishment is generally decisive for the allocation of taxing rights, and Switzerland's treaty practice is largely aligned with Article 5 of the OECD MTC.

There is no systematic deviation from the OECD MTC; deviations are rather treaty-specific and depend on the negotiation power with Switzerland and its respective treaty partner. In practice, differences may arise in relation to:

- the construction site threshold (which may differ from 12 months in certain treaties);
- treaty-specific extensions, such as service permanent establishment concepts in some agreements; and
- the detailed drafting of agency and anti-fragmentation rules as treaties are updated in line with international standards.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

In Switzerland, income from immovable property is, in principle, taxed in the canton where the property is located. For Swiss tax resident individuals, rental income from Swiss real estate (and, under the current system, the notional rental value for owner-occupied property) is included in taxable income at the federal, cantonal and communal levels, while the property itself is generally subject to cantonal and communal wealth tax.

Swiss voters abolished the taxation of notional rental value in 2025, simultaneously restricting certain deductions. Entry into force is planned for 2029.

Gains realised on the sale of Swiss real estate are taxed at the cantonal level. Private individuals are subject to a specific real estate capital gains tax on the disposal of Swiss real property, whereas gains realised through a commercial real estate activity (or by corporate taxpayers) may fall under ordinary income/profit taxation or under cantonal real estate gains tax rules, depending on the cantons.

For non-resident individuals, Swiss real estate typically triggers limited tax liability in Switzerland. As a rule, Switzerland taxes the non-resident on Swiss-source rental income (and, currently, the notional rental value) and on Swiss real estate capital gains in the canton of situs, subject to any limitations or allocation rules under the applicable DTA.

For Swiss residents, immovable property abroad is generally not taxed but is typically taken into account to set the applicable tax rate. Treaty provisions usually confirm the situs principle reflected in Article 6 of the OECD MTC.

In addition, some DTAs concluded by Switzerland depart from the OECD MTC approach for immovable property held through real estate companies. For example, the Switzerland–France DTA gives France the right to tax shares in a French real estate company (*société civile immobilière*, or SCI), while Switzerland must, in principle, exempt income and gains that are allocated to France under the treaty. However, the treaty also provides that the exemption is granted only if the taxpayer can show that the relevant income, capital gains or wealth elements have been effectively taxed in France.

In substance, the SFSC considers that it is a "subject-to-tax" clause: Switzerland grants the exemption only if effective taxation occurs in France; otherwise, Switzerland may tax the SCI shares (including for wealth tax purposes).

3.2 Business Profits

In a cross-border context, business profits are taxed in Switzerland based on the distinction between unlimited and limited tax liability and, in treaty cases, by reference to the allocation rules for business profits (in particular, the permanent establishment threshold).

A Swiss-resident corporation is, in principle, subject to unlimited tax liability and is taxed on its worldwide business profits, subject to the usual exclusions for profits attributable to foreign permanent establishments and foreign immovable property, which are generally exempt from Swiss corporate income tax under the exemption method.

Conversely, a non-resident legal entity is subject to Swiss corporate income tax only to the extent it has a Swiss nexus – typically a permanent establishment in Switzerland. In that case, Switzerland taxes only the profits attributable to the Swiss permanent establishment, in line with the applicable treaty framework and domestic profit allocation principles.

The Swiss tax base is generally based on the company's statutory financial statements prepared under Swiss commercial law, subject to specific tax adjustments. In cross-border situations, these adjustments often include corrections related to intra-group transactions, in particular transfer pricing adjustments and recharacterisations, such as hidden profit distributions, as well as the application of domestic safe harbour practices related to intra-group financing (eg, interest rates or thin capitalisation parameters).

3.3 Passive Income

In Switzerland, dividends, interest and royalties are, in principle, part of the taxable income base of both individuals and corporate taxpayers. In a cross-border context, the tax outcome is largely driven by:

- the domestic rules on ordinary income/profit taxation;
- the scope of the Swiss withholding tax (WHT); and
- the relief mechanisms available under the applicable DTA.

From a direct tax perspective, Switzerland provides relief to mitigate economic double taxation on qualifying participations. Corporate taxpayers may benefit from the participation relief on qualifying dividend income (and, under the relevant conditions, on capital gains – see **3.4 Capital Gains**), which reduces the taxable profit proportionally; for dividends, a participation generally qualifies if it represents at least 10% of the share capital (or profit and reserves) of the distributing entity or has a fair market value of at least CHF1 million.

Private individuals benefit from partial taxation of dividends from qualifying participations (generally a minimum shareholding of 10%), with an inclusion rate of 70% at the federal level and a cantonal inclusion rate that must be at least 50% (subject to cantonal law).

Switzerland levies a federal WHT, which operates either as a safeguard tax or as a final tax, depending on the context. It is generally levied at a rate of 35% on Swiss-source investment income and lottery winnings, and at lower rates for certain insurance-type benefits. The tax is notably levied on:

- dividends and comparable profit distributions by Swiss corporations;
- certain categories of interest – notably, interest on Swiss bonds and "bond-like" financings (including structures that fall under the Swiss "bond/bond-like loan" practice);
- interest paid by Swiss banks (and entities treated as banks for these purposes) to non-banks; and
- income paid by Swiss collective investment schemes (ie, funds).

Royalties are generally not subject to Swiss WHT; however, in related-party contexts an excessive royalty (or other excessive remuneration) may be recharacterised as a hidden profit distribution and trigger WHT at the level of the Swiss payer.

From a technical perspective, Swiss WHT is a self-assessment tax collected at source by the Swiss debtor/paying agent; late-payment interest can accrue if the tax is not duly reported and paid.

Swiss-resident recipients are, in principle, entitled to a full refund of WHT, provided the conditions are met. In particular, the claimant must be the beneficial owner

of the assets generating the taxable income at the time the taxable benefit becomes due (ie, the effective recipient), and the relevant income and underlying assets must be properly declared for Swiss tax purposes. However, a refund is excluded where the structure is linked with tax evasion or constitutes an abuse of rights (see **5.2 Anti-Avoidance Mechanisms**). Subject to certain conditions, Swiss law allows the use of a "declaration procedure" (ie, the reporting of the WHT instead of its payment), which can eliminate the cash burden (ie, payment followed by a refund).

For non-resident recipients, relief is generally available to the extent provided by the applicable DTA, whether by way of a refund procedure or via a "declaration procedure".

Finally, a deemed dividend/hidden profit distribution can trigger WHT exposure at 35% and, in certain circumstances, gross-up mechanics may result in a substantially higher effective burden.

3.4 Capital Gains

Private capital gains on movable assets are generally tax-exempt in Switzerland, subject to certain exceptions. This exemption presupposes that the individual's activity does not amount to a commercial activity.

By contrast, capital gains realised on commercial assets are generally subject to ordinary taxation. An exception applies to gains realised on the disposal of qualified participations (ie, at least a 10% participation in a corporation; see **3.3 Passive Income**), which are only included in the tax base at 70% at the federal level and a cantonal inclusion rate that must be at least 50% (subject to cantonal law).

Likewise, capital gains realised by corporate taxpayers are, in principle, subject to ordinary corporate income taxation, except that gains on the disposal of qualified participations benefit from participation relief (see **3.3 Passive Income**).

3.5 Employment Income

Resident

For Swiss tax residents, all income from gainful activity is taxable, whether received as a one-off payment or on a recurring basis. This includes all remuneration from employment relationships governed by private or public law, such as salary and ancillary benefits (eg, allowances, commissions, bonuses, profit-sharing and any benefits arising from employee participation plans).

Income from self-employment is also taxable and includes all revenues derived from the operation of a commercial, industrial, artisanal, agricultural or forestry enterprise, from the exercise of a liberal profession, or from any other independent gainful activity.

Non-Resident

Non-resident individuals performing dependent employment in Switzerland are subject to Swiss taxation on their Swiss-source employment income, which is typically collected by way of tax at source by the Swiss employer. In addition, benefits derived from stock options are taxed proportionally based on the ratio between the total benefit and the period spent working in Switzerland, even if the options are exercised after the taxpayer has ceased working in Switzerland.

3.6 Other Income

Where relevant, Swiss tax treaties typically include specific provisions regarding directors' fees, pensions, and income of artists and sportspeople, generally in line with the OECD MTC.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Switzerland has not yet implemented Amount B through specific domestic rules. In practice, transfer pricing in Switzerland is applied on the basis of the arm's length principle with reference to the OECD transfer pricing guidance as an interpretative tool. Accordingly, any application of Amount B would be expected to arise through OECD-aligned practice rather than through a bespoke Swiss implementation, and no Switzerland-specific deviations have been introduced to date.

4.2 Pillar One – Amount A

Amount A under Pillar One would require implementation through a multilateral agreement. Negotiations

within the OECD/G20 Inclusive Framework Task Force on the Digital Economy have been ongoing since November 2021, but no final Pillar One package has yet been adopted.

Switzerland has consistently supported consensus-based decision-making within the Inclusive Framework. The State Secretariat for International Finance (SIF) has participated in the negotiations and represented Switzerland's positions. If Pillar One were adopted at Inclusive Framework level, the Federal Council would decide whether Switzerland should sign the MLC. For subsequent ratification, approval from the Parliament would also be required, and any ratification would require parliamentary approval.

4.3 Pillar Two

In January 2022, the Federal Council decided to introduce the minimum tax rate by way of a constitutional amendment. A referendum was held on 18 June 2023, and the constitutional basis was approved. Despite calls from political and economic circles to defer implementation until 2025, the Federal Council enacted a temporary ordinance with effect from 1 January 2024, introducing the qualified domestic minimum top-up tax (QDMTT).

On 4 September 2024, the Federal Council decided to bring the Income Inclusion Rule (IIR) into force with effect from 1 January 2025. The Federal Council has six years to present a federal law that will replace the ordinance.

Due to international criticism, Switzerland has decided to postpone the entry into force of the Undertaxed Profits Rule (UTPR).

On 12 September 2025, the Federal Council adopted the dispatch approving the international legal framework for the exchange of information under the OECD minimum tax. The exchange of information is expected to enter in force no earlier than 1 July 2026.

4.4 Specific Features or Deviations of Pillar Two

Switzerland has implemented the global minimum tax broadly in line with the OECD framework. Under this system, the IIR imposes a minimum effective tax rate of 15% on the profits of large multinational groups that generate a global turnover of at least EUR750 million. Based on the current Swiss implementation, there are no material deviations from the OECD framework.

4.5 Digital Services Tax

Switzerland has not introduced a specific tax on digital services or streaming services, adopting the position that the digital economy should be addressed through a multilateral solution. Switzerland therefore focuses on the OECD/G20 Inclusive Framework process and refrains from unilateral measures, especially if they fall outside the scope of DTAs.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Definitions

Swiss law distinguishes between tax evasion, tax fraud and tax avoidance, and these concepts apply equally in domestic and cross-border situations.

Tax evasion (soustraction fiscale/ Steuerhinterziehung)

This covers situations where a taxpayer, intentionally or through negligence, causes a tax assessment not to be carried out when it should have been, or causes an assessment that has become final to be incomplete. Tax evasion is punishable by a fine, generally set between one-third and three times the amount of tax evaded, depending on the circumstances, including the gravity of the fault, the co-operation of the taxpayer, etc.

Tax fraud (fraude fiscale/Steuerbertrug)

This is a specific offence and involves the use of falsified or materially incorrect documents with the intent to deceive the tax authorities. In particular, anyone who uses falsified or untrue documents (eg, balance sheet, profit and loss statement, salary certificate or other attestations) with intent to mislead the tax authorities is potentially liable to a jail sentence of up to three years and/or a fine.

Embezzlement of tax at source

This is another specific tax offence that occurs where a person obliged to levy tax at source on employment income unlawfully retains or diverts the amounts collected for their own benefit or for the benefit of a third party. It constitutes a qualified tax offence and is punishable by a jail sentence of up to three years and/or a fine.

Tax avoidance

Swiss case law and legal scholars also recognise the concept of tax avoidance (*évasion fiscale*/*Steuerumgehung*) developed by the SFSC. An arrangement may be treated as abusive tax avoidance if the following three conditions are cumulatively met:

- the legal structure chosen appears unusual, inappropriate or artificial;
- it was adopted with the intention of achieving a tax saving; and
- it results in significant tax savings.

Where these criteria are satisfied, the tax authorities may disregard the chosen form and assess taxation based on an economic recharacterisation of the situation (ie, on the basis of the circumstances that would have existed absent the abusive arrangement).

5.2 Anti-Avoidance Mechanisms

Switzerland combats tax fraud, tax evasion and abusive tax avoidance in cross-border situations through a combination of:

- treaty-based provisions;
- administrative practice (in particular for treaty relief and withholding tax);
- general and specific domestic anti-abuse rules; and
- case law developed by the SFSC.

Specific DTA Provisions

Swiss DTAs often contain provisions that are intended to prevent abuse, although the content differs depending on the treaty partner. By way of example, the Switzerland–US DTA includes a limitation-on-benefits approach under which treaty benefits (eg, reduced withholding tax) are granted only if the recipient qualifies as a "qualified person" within the meaning of the treaty (eg, Article 22 of the Switzerland–US DTA).

General Anti-Abuse Reservation in Treaty Application

Historically, Switzerland applied the Federal Council decree of 1962 (ACF 62) to limit treaty abuse. Following a partial repeal in 2017, the decree was fully abolished as of 1 January 2022. Separately, the SFSC has recognised that all Swiss DTAs are subject to an implicit reservation against treaty abuse. According to SFSC case law, based on the requirement to apply treaties in good faith (pacta sunt servanda; Article 26 of the Vienna Convention on the Law of Treaties), treaty benefits may be denied in abusive situations even where the treaty does not contain an explicit anti-abuse clause. In this context, and particularly in the context of WHT relief, beneficial ownership plays a key role: treaty relief may be refused if the formal recipient is not the effective beneficiary (eg, where the economic beneficiary should not have benefited from the relevant DTA).

Administrative Practice: Treaty Shopping/Rule Shopping

To counter treaty shopping and rule shopping, Swiss practice applies substance-oriented tests aimed at identifying inappropriate or artificial arrangements in the context of WHT relief. Under this practice, substance may be demonstrated in particular through:

- personal substance (own personnel operating from own premises in the state of residence; personnel may also be employed by a related local entity);
- functional substance (in addition to the Swiss participation, at least one other substantial participation in another state so that the entity can be regarded as acting as an international holding company); and
- balance sheet substance (eg, an equity ratio of at least 30% in the commercial balance sheet).

Whether these elements must be met alternatively or cumulatively depends on the specific circumstances.

Domestic Anti-Abuse Rule

Swiss domestic law sometimes contains specific rules against cross-border abusive structures. This

includes, for example, residence concepts such as the place of effective management (see **2.5 Tax Residence of Legal Entities**).

With respect to WHT, the Withholding Tax Act includes an explicit anti-abuse rule: a refund is excluded in abusive situations, notably where a Swiss-resident company is interposed to obtain a refund that would not be available to the foreign economic beneficiary. In practice, this provision is applied in various situations defined by the administrative practice, such as "international transposition", "national converter" and comparable arrangements.

Case Law

In addition, several theories have been developed by the SFSC against tax evasion in cross-border situations. These mechanisms allow the Swiss tax authorities to tax all or part of a company's profits or an individual's income, to prevent abusive arrangements and ensure taxation that reflects economic reality. These concepts allow the tax authorities to allocate income or profits differently from the legal form chosen by the taxpayer.

Key examples include the following.

- Transfer pricing adjustments: remuneration in related-party cross-border dealings may be corrected under the arm's length principle. If a Swiss company pays excessive remuneration to a related foreign entity, said remuneration may be adjusted, leading to an increase of the Swiss taxable profit.
- Mandate theory: where a foreign company effectively acts as an agent for its Swiss parent company, the profit realised at the level of the foreign entity may be attributed to the Swiss parent, by reference to a mandate relationship.
- Tax avoidance/*Durchgriff* depending on the circumstances, the authorities may rely on tax evasion concepts (see **5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes**) and look-through (*Durchgriff*) approaches to disregard arrangements that do not reflect the underlying economic substance.

5.3 Blacklists and Non-Cooperative Jurisdictions

Switzerland does not maintain a list of non-cooperative or high-risk jurisdictions for tax purposes that would automatically trigger specific income tax consequences merely because a counterparty is located in a particular jurisdiction.

However, in practice, transactions involving entities in low-tax or offshore jurisdictions are typically subject to increased scrutiny by Swiss tax authorities, irrespective of whether a jurisdiction is on a formal "non-cooperative" list. In such cases, SFSC case law may require the taxpayer to substantiate the arrangement more extensively and, depending on the circumstances, may effectively shift the burden of proof to the taxpayer.

5.4 Reporting Obligations and Disclosure Regimes

In Switzerland, the primary reporting obligation is the annual filing of a complete tax return, in which taxpayers must disclose all relevant facts, including domestic and foreign income and assets.

Where the tax authorities have indications that a tax return or a final assessment is incomplete, they may open proceedings to determine back taxes (*procédure en rappel d'impôts/Nachsteuerverfahren*) and, where appropriate, initiate criminal proceedings in parallel. The back-tax procedure broadly follows the principles of the ordinary assessment procedure: the tax administration sets out the elements indicating an incomplete assessment, grants the taxpayer the right to be heard and, if the matter is not clarified in the taxpayer's favour, issues an additional tax assessment.

In addition, the WHT (see **3.3 Passive Income**) functions as a structural compliance mechanism designed to encourage proper declaration of taxable income and assets.

Finally, international reporting and exchange-of-information mechanisms (see **7.1 Legal Framework for Administrative Co-Operation**) can, in practice, trigger follow-up enquiries and tax audits.

5.5 Role of Tax Authorities and Enforcement Measures

In Switzerland, the investigative powers of the authorities depend on the procedural framework. A distinction must be made between the ordinary tax assessment and audit process, the procedure relating to "tax misdemeanours" (in particular tax evasion), and proceedings concerning tax "offences" (in particular tax fraud).

In the ordinary tax assessment procedure, the competent cantonal tax authorities and, for certain federal taxes, the FTA may request all information and supporting documentation necessary to determine a correct assessment.

The authorities are entitled, after the filing of a tax return, to seek additional explanations, accounting records and documentary evidence. In practice, the FTA regularly conducts audits in VAT, WHT and stamp duties, typically covering prior tax periods. Once an audit is initiated, the taxpayer is required to grant access to books, records and supporting documents. The purpose of an audit is to verify compliance and detect under-reporting. Audit triggers vary, but typically include higher-risk profiles, taxpayers not audited for a longer period, and random selection.

In practice, an audit initiated in relation to a specific tax (eg, WHT) that results in back taxes will often prompt the authorities to extend their review and to open further audits covering other taxes.

This distinction between administrative and criminal aspects is important because, in practice, they are often conducted in parallel. In proceedings relating to tax misdemeanours, such as tax evasion or breaches of procedural obligations, the same tax administration is generally competent both for the back-tax procedure and for setting the fine. This overlap may give rise to procedural tensions, because the taxpayer is under a duty to co-operate in the administrative back-tax procedure, whereas the criminal law procedural guarantee, including the privilege against self-incrimination, applies in criminal proceedings.

Where the facts suggest a tax offence, such as tax fraud, the matter moves beyond the ordinary administrative framework. In such cases, the public prosecutor is competent for the criminal prosecution, and the proceedings are governed by the Swiss Code of Criminal Procedure. The public prosecutor may use coercive investigative measures where appropriate.

In specific cases, the FTA may also order coercive measures under the Federal Act on Administrative Criminal Law, based on a written mandate from the head of the Federal Department of Finance, including:

- searches of premises;
- seizure of documents/data;
- sequestration/freezing of assets; and
- questioning of individuals.

Accordingly, Swiss tax authorities have broad powers to obtain records and conduct audits in the ordinary assessment context, but searches, raids and comparable coercive measures are generally reserved for criminal or administrative criminal proceedings and require a specific legal basis and sufficient suspicion of a serious offence.

6. Penalties and Sanctions

6.1 Tax Penalties

In Switzerland, no separate penalty regime applies solely because a transaction is cross-border. The general tax penalty framework applies equally to domestic and cross-border situations where taxable facts have been omitted, misreported or otherwise handled incorrectly.

If taxes have not been properly declared or paid, the competent authority may first open a back-tax procedure (see **5.4 Reporting Obligations and Disclosure Regimes**) to recover the unpaid tax. Under Swiss law, back taxes may generally be assessed for up to ten years following the relevant tax period or the entry into force of the original assessment, depending on the tax concerned and the applicable procedural rules.

Where the conduct amounts to tax evasion, whether committed intentionally or negligently, the taxpayer is exposed to a fine. As a rule, the fine is assessed by reference to the amount of tax evaded and typically

ranges from one-third to three times the evaded tax, depending on the degree of fault. Attempted tax evasion is also punishable, usually at a reduced level.

The competent authority depends on the tax involved. As a rule:

- cantonal tax authorities are competent for cantonal and communal taxes and, in practice, also for the administration and sanctioning of direct federal tax within their sphere of competence; and
- the FTA is competent for federal indirect taxes, in particular VAT, WHT and stamp duties.

The same authority that conducts the back-tax procedure is often also competent for the related tax-evasion procedure, which explains the close connection between the recovery of unpaid taxes and the imposition of administrative penalties.

6.2 Criminal Penalties

In Switzerland, tax evasion is generally not treated as an ordinary criminal offence in the strict sense, but rather as a tax misdemeanour of an administrative criminal nature, punishable primarily by a fine (see **6.1 Tax Penalties**). By contrast, tax fraud constitutes a criminal offence and may be prosecuted under the applicable tax legislation and, depending on the circumstances, also under the Swiss Criminal Code. The sanctions may include imprisonment of up to three years and/or a fine.

Where the circumstances are especially aggravating, Swiss administrative criminal law provides for enhanced sanctions. A person who, acting professionally or with the assistance of third parties, secures a particularly significant unlawful advantage or causes particularly significant prejudice to the pecuniary interests or other rights of the public authorities through serious tax or customs offences may be punished by a jail sentence of up to five years or a fine.

In addition, certain serious tax offences may have consequences beyond tax criminal law. Under Swiss anti-money laundering rules, a qualified tax offence may constitute a predicate offence to money laundering. This may notably be the case where tax fraud leads to an evaded tax amount exceeding CHF300,000 per tax period.

Accordingly, the key distinction under Swiss law is that ordinary tax evasion is generally sanctioned by fines, whereas tax fraud and other aggravated forms of conduct may lead to jail sentences.

6.3 Interaction Between Tax and Criminal Procedures

Under Swiss law, tax offences such as tax fraud are not prosecuted by the tax administration itself. Where the competent tax authority considers that the relevant facts indicate a tax offence, the public prosecutor is competent. The public prosecutor then assumes responsibility for the criminal proceedings, which are conducted under the Swiss Code of Criminal Procedure. Once seized, the public prosecutor investigates the facts, may order coercive measures where necessary, and will then decide whether to discontinue the case, issue a penalty order or refer the matter to the competent criminal court for judgment.

Co-ordination is ensured through this allocation of responsibilities. The tax authority remains competent for the administrative side, including the assessment of back taxes and, where applicable, proceedings relating to tax misdemeanours such as tax evasion. By contrast, the judicial authorities take over the criminal side where the conduct qualifies as a tax offence.

In the case of tax misdemeanours, however, the same cantonal or federal tax administration is usually competent both for the back-tax procedure and for the sanctioning procedure. This cumulation of functions may create procedural tension, as the taxpayer is subject to a duty to co-operate in the administrative back-tax procedure, while criminal law procedural guarantees (such as the privilege against self-incrimination) apply in the “criminal” context. For this reason, it is often considered preferable that, where possible, the criminal procedure be conducted first, before the administrative back-tax procedure is finalised. In practice, however, the two procedures are often conducted in parallel.

Accordingly, the Swiss system does provide for a referral mechanism where tax authorities identify facts

suggesting tax fraud or another tax offence. Co-ordination is achieved through the division between tax authorities, which initiate the complaint and handle the tax assessment aspects, and the public prosecutor and criminal courts, which conduct and determine the criminal proceedings.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

In Switzerland, administrative co-operation in tax matters is largely treaty-based and relies on a mix of bilateral and multilateral instruments, supplemented by domestic implementing laws.

Key legal bases include the following.

- DTAs generally include an exchange-of-information on request clause, as well as dispute resolution mechanisms.
- Tax information exchange agreements (TIEAs/AERF) and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters also support exchange on request.
- The same multilateral Convention also provides the framework for spontaneous exchange of information (Article 7), which has been applicable in Switzerland for spontaneous exchange purposes for tax periods starting from 1 January 2018 (with the Convention in force for Switzerland since 1 January 2017).
- Automatic exchange of information (AEOI/CRS) on financial accounts is implemented mainly via the Multilateral Competent Authority Agreement (MCAA). With the EU, AEOI is implemented via a bilateral agreement (ie, not through EU directives). The Swiss legal bases have been in force since 1 January 2017.
- Country-by-country reporting (CbCR) exchange is implemented through the multilateral competent authority agreement and the corresponding Swiss implementing law and ordinance (in force since 1 December 2017).

7.2 Exchange of Information Clauses in Tax Agreements

Switzerland exchanges tax information in automatic, spontaneous and on-request formats, based on the applicable treaty or multilateral framework and the corresponding Swiss implementing rules (See **7.1 Legal Framework for Administrative Co-Operation**).

Automatic Exchange (AEOI/CRS and Similar Frameworks)

Switzerland applies the global standard for the automatic exchange of information on financial accounts (AEOI/CRS), primarily via the MCAA; with the EU, AEOI is implemented through a bilateral agreement. The Swiss legal bases for AEOI (including the Convention, the MCAA and the Swiss implementing law) have been in force since 1 January 2017, and the system provides for regular exchanges with partner jurisdictions that have an activated exchange relationship.

Exchange on Request

Switzerland grants administrative assistance on request under exchange-of-information clauses in DTAs/TIEAs and under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, implemented domestically through the Swiss framework for international administrative assistance. Swiss practice is built around the standard that information is provided in response to a duly substantiated request (ie, no “fishing expeditions”).

Spontaneous Exchange

Switzerland also exchanges information spontaneously in defined situations, notably in relation to certain tax rulings/advance rulings. Switzerland has been exchanging information on relevant tax rulings since 2018, and performs such exchanges with partner jurisdictions in practice.

Overall, these mechanisms allow Swiss authorities to obtain information from partner jurisdictions and, conversely, to transmit information where the applicable framework provides for it, thereby strengthening transparency and enforcement in cross-border situations.

7.3 Other Forms of International Tax Collaboration

This is not applicable in Switzerland.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Where double taxation has occurred, or there is a risk that taxation not in accordance with an applicable DTA will occur, a taxpayer resident in Switzerland may request the initiation of a mutual agreement procedure (MAP). The legal basis is found primarily in the MAP provision of the applicable DTA, typically corresponding to Article 25 of the OECD MTC. In addition, the procedure is governed under Swiss domestic law by Articles 2 et seq of the Federal Act on the Implementation of International Tax Agreements (ITAIA), which entered into force on 1 January 2022.

In Switzerland, MAP requests must generally be submitted to the Federal Department of Finance, acting through the State Secretariat for International Finance (SIF). The MAP may concern either the elimination of double taxation that has already arisen or the prevention of imminent double taxation. In the transfer pricing area, the MAP framework also serves as the basis for bilateral or multilateral advance pricing arrangements.

It should be noted that the MAP is a procedure between the competent authorities of the states concerned; the taxpayer is not formally a party to that inter-state procedure, although it is initiated at the taxpayer's request and the co-operation of the taxpayer plays an important role in practice.

8.2 Application Deadlines

Generally, a MAP request must be submitted within three years from the first notification of the action giving rise to double taxation. This reflects the approach of Article 25 of the OECD MTC and is also the position adopted in many Swiss tax treaties and in Swiss domestic legislation (ie, ITAIA).

However, the applicable deadline must always be verified under the relevant treaty. While most Swiss DTAs contain the three-year period, some treaties either provide for a different deadline or do not specify any express time limit.

In practice, taxpayers are expected to file the request as early as possible.

8.3 Mandatory Binding Arbitration

Arbitration is available only where the relevant DTA expressly provides for it. Several Swiss DTAs contain an arbitration clause, under which unresolved issues in a MAP may, after expiry of the treaty-based waiting period, be submitted to arbitration at the taxpayer's request.

Arbitration is therefore not generally available across Switzerland's treaty network, but only on a treaty-by-treaty basis. In addition, most treaties providing for arbitration exclude it where a court has already rendered a decision on the matter. Where arbitration is available and results in a decision, that decision must be implemented through mutual agreement by the competent authorities.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Switzerland does not have a separate standalone advance pricing agreement (APA) programme. In practice, however, APAs are available and are generally treated as a specific form of MAP-based dispute prevention in transfer pricing matters.

This reflects the broader Swiss approach to transfer pricing. Swiss tax law does not contain a comprehensive codified transfer pricing regime; instead, the arm's length principle is applied under general tax law principles, and Swiss tax authorities and courts commonly rely on the OECD Transfer Pricing Guidelines as the principal interpretative standard.

In procedural terms, APAs may be unilateral, bilateral or multilateral, depending on the circumstances. Bilateral and multilateral APAs are handled within the MAP framework through the competent authorities. MAPs in the transfer pricing area may be used to determine transfer prices in advance and may, where the facts

and circumstances are unchanged, also extend to prior tax periods by way of rollback.

In practice, the duration of an APA is determined on a case-by-case basis. It typically covers three to five years, depending on the nature of the transactions and the expected stability of the underlying facts. Unilateral APAs or transfer pricing rulings with cross-border implications may also trigger spontaneous exchange of information.

9.2 Other Mechanisms

Unilateral Tax Ruling

In practice, the main instrument for obtaining tax certainty in Switzerland is the unilateral tax ruling.

A tax ruling is a binding confirmation, issued at the taxpayer's request, that the competent Swiss tax authority will accept the Swiss tax treatment of a proposed structure, transaction or set of facts as presented. In international tax matters, rulings are widely used to obtain certainty before the implementation of a structure or before a transaction, and materially reduce the risk of subsequent disputes.

More generally, Swiss practice is characterised by a co-operative relationship between taxpayers, advisers and the tax authorities. In many cases, the authorities are willing to discuss a contemplated structure or transaction in advance, which can help resolve questions at an early stage and avoid later controversy.

In addition, the tax authorities issue administrative guidance and, in certain areas, safe harbour provisions, which taxpayers may rely upon when structuring and documenting cross-border arrangements.

That said, Switzerland does not have a formal co-operative compliance programme comparable to those established in some other jurisdictions.

Trends and Developments

Contributed by:
René Matteotti, Manuel Ulrich, Gregor Steiner and Natalja Ezzaini
Tax Partner AG

Tax Partner AG is focused on Swiss and international tax law, and is recognised as a leading independent tax boutique. With 17 partners and counsel and a total of approximately 50 tax experts, including attorneys, legal experts and economists, the firm advises multinational and national corporate clients as well as individuals in all tax areas. A central focus is tax controversy and dispute resolution, including transfer pricing issues. Tax Partner AG also provides support regarding transfer pricing studies and the preparation of transfer pricing documentation. Other key areas include M&A, restructuring, real estate transactions, financial products, VAT and customs. Tax Partner AG is independent and collaborates with various leading tax law firms globally. In 2005, the firm was a co-founder of Taxand, the world's largest independent organisation of highly qualified tax experts.

Authors



René Matteotti is a tax attorney and Professor of Law at the University of Zurich, specialising in Swiss, European and international tax law. He heads the tax controversy department at Tax Partner AG, and his expertise includes transfer pricing and government advisory work. René represents clients before tax authorities and courts, primarily advising multinationals in complex disputes. He also regularly provides legal opinions to government bodies and business associations, and serves on the Scientific Committees of the International Fiscal Association and the European Association of Tax Law Professors (EATLP).



Manuel Ulrich has more than 15 years' experience in tax advisory, including more than ten years in transfer pricing at Big Four companies in Germany and Switzerland. He has been working as a senior adviser at Tax Partner since December 2025. Manuel focuses on transfer pricing projects, advising multinationals of different sizes and operating in a multitude of industries on transfer pricing planning, documentation, the defence of transfer pricing models, value chain restructuring, rulings with tax authorities and tax/transfer pricing due diligence. He is also a speaker at selected educational institutions.



Gregor Steiner has around 15 years of experience in domestic and international tax matters. He started his career at a Big Four company in 2011 before joining Tax Partner in 2020. Besides national and international corporate tax law, his activities are focused in the area of financial services, on tax advisory services for financial institutions and for collective investment schemes and their investors.



Natalja Ezzaini holds a Master's degree in law from the University of Zurich (MLaw UZH), with a specialisation in tax law, and is a Swiss certified tax expert. She joined Tax Partner AG in 2020, where she advises clients on all aspects of national and international tax law, from corporate tax law to tax planning for private clients. She is also actively engaged as an editor and author of the famous Swiss tax blog, "taxlawblog.ch". Natalja also regularly speaks at tax seminars hosted by leading educational institutions, and publishes expert articles on current tax developments.

Contributed by: René Matteotti, Manuel Ulrich, Gregor Steiner and Natalja Ezzaini, **Tax Partner AG**

Tax Partner AG

Talstrasse 80
8001 Zurich
Switzerland

Tel: +41 44 215 77 77
Email: reception@taxpartner.ch
Web: taxpartner.ch/en

Introduction/Recent Developments

Switzerland is and aims to remain a country that attracts investments. Therefore, the Swiss tax law aims to balance between attracting investments and complying with international standards regarding tax evasion and profit shifting.

This article provides an update on significant developments in Swiss tax law, including:

- key amendments to Swiss double taxation agreements (DTAs) with significant trading partners;
- measures to avoid double taxation for multinational enterprises (MNEs);
- GloBE in Switzerland, including interdependence with incentive measures as well as potential conflicts; and
- recent court decisions.

Status Update: Swiss Double Taxation Agreements

Switzerland has a very extensive network of DTAs, which benefits Switzerland as a business location, especially for MNE groups. There have been significant developments regarding the DTA with Germany, and further developments are expected in relation to the DTA with the USA.

Germany

The DTA with Germany is one of the most important DTAs in Switzerland. However, it contains significant deviations from the OECD Model Convention, such as providing for "overarching taxation". This refers to situations in which Germany, in certain constellations, continues to assert a comprehensive ("overarching") right to tax despite the individual being considered resident in Switzerland under Article 4 of the DTA with Germany.

Switzerland aimed for the abolition of this overarching taxation but was not successful, as Germany requested enforcement assistance, which Switzerland refused.

As stipulated in Article 23 of the Additional Protocol, the new provisions will enter into force in stages, with most of them having taken effect on 1 January 2026. The overall outcome of the new Additional Protocol can therefore be described as modest.

- Principal Purpose Test: notwithstanding the Principal Purpose Test, which has been newly incorporated into the agreement with Germany in line with the minimum standard under BEPS Action 6 of the G20/OECD Inclusive Framework on BEPS, the contracting states remain entitled to apply their domestic anti-abuse provisions in addition.
- Allowing top-up taxes: the new Article 24 (4) clarifies that the contracting states are not prevented from levying an international top-up tax under the GloBE minimum tax regime.
- Changes for cross-border commuters: the amendment includes comparatively extensive changes concerning cross-border commuter issues (Articles 15 and 15a). Given the number of cross-border commuters between Germany and Switzerland, numerous taxpayers may be affected by these amendments. For instance, when a wage exemption applies, the salary must be taxed where the work would be performed if no exemption existed. In addition, the definition of "regular return to the residence" has been adjusted (see Article 15a(2)), so that a return is considered regular only if the employee travels from the residence to the work location and back on at least 20% of the agreed working days in the calendar year.

- Mutual agreement procedures (MAPs)/arbitration: the MAP clause of the DTA (Article 26) is amended with regards to the arbitration clause, aiming to streamline the respective processes.
- Alignments with respect to the latest OECD Model Convention for Double Taxation Agreements: further amendments align the text with the OECD Model Convention. These changes include provisions on the definition and taxation of permanent establishments, especially regarding activities of dependent agents (see the revised Articles 5 (4) and (7)).

USA

Given the close economic ties between the two countries, the DTA with the USA is also of paramount importance to Switzerland. The last partial revision took place in 2009, but it took around ten years for the DTA to be ratified and brought into force. A new partial revision is now due.

The updated DTA between the USA and Switzerland is expected to be signed during 2026. Based on information currently available, the main expected amendments are as follows.

- Expected reduction of WHT rate on group dividends from 5% to 0%. Such measure would move Switzerland closer to treaty positions already seen in the UK, the Netherlands and Luxembourg vis-à-vis the United States.
- Expected tightening of the Limitation on Benefits (LOB) clause more in line with the US Model Income Tax Convention (2016). This measure would not introduce a new concept, but would rather make the existing LOB provision more stringent, thereby further restricting access to treaty benefits. In particular, stricter qualification criteria and enhanced anti-abuse safeguards are expected to be imposed, effectively narrowing the scope for claiming benefits compared to the current treaty framework.

The update with regards to the expected DTA between the USA and Switzerland must be considered with caution as the revised DTA has not yet been signed and, as such, amendments during ongoing negotiations may apply.

Update on Measures to Avoid International Double Taxation in Switzerland

MNE groups may be subject to double taxation (often as a result of a tax audit – eg, adjustment of intercompany transfer prices). In such cases, Switzerland may allow different approaches to mitigate/eliminate the double taxation – ie, bilateral or multilateral MAPs, as well as unilateral Swiss specific measures (unilateral tax relief). A unilateral tax relief generally constitutes a one-sided profitability adjustment of the taxpayer ((group) entity) located in Switzerland subsequent to the previous adjustment abroad to mitigate/eliminate double taxation resulting from this first adjustment. Such unilateral tax relief may be a faster and more pragmatic approach than a bilateral/multilateral MAP.

Swiss specifics

As Switzerland is organised as a federation that allocates a high degree of independence in legislation to the cantonal level, the availability of the legal instrument of a unilateral tax relief depends in general on the respective legislation of the specific canton. Therefore, when considering such measure, it is crucial to assess the availability and, if available, the specific regulations for applying the measure in the respective canton. In some cantons rather informal approaches may apply, while in others a formal application for an appeal may be necessary.

Example canton: Zurich

For instance, the cantonal tax authority of Zurich recently published guidance providing practical direction on the procedures to eliminate intercantonal or international double taxation (ZStB No. 155.1, issued 5 March 2026). This guidance states that international double taxation does not, in itself, constitute grounds for revising a tax assessment that has already become final. A request for a revision based on the argument of international double taxation is, therefore, generally not considered by the cantonal tax authority. This applies to both ordinary taxes and withholding taxes.

In cases of international double taxation, a request for a MAP may be made to the State Secretariat for International Financial Affairs (SIF). It is then the responsibility of the SIF, in clear cases, to liaise with the cantonal tax authority to negotiate a unilateral solution (domestic agreement, Article 16 StADG) if this can

resolve the double taxation. If the double taxation cannot be unilaterally resolved by Swiss authorities, an international MAP will be initiated. A binding mutual agreement will be communicated to the cantonal tax authority by the SIF. Based on this, the cantonal tax authority will issue an implementation order ("revision"), replacing the original tax assessment.

GloBE in Switzerland: Updates and Conflict Potential

The implementation of OECD Pillar Two (the global minimum tax for MNE groups) gives rise to new challenges for both taxpayers and tax authorities. Switzerland has introduced a Qualified Domestic Minimum Top-up Tax (QDMTT) as from the 2024 tax year and an international top-up tax in the form of an Income Inclusion Rule (IIR) as from the 2025 tax year. There are currently no plans to introduce an Undertaxed Profits Rule (UTPR).

In addition to filing a top-up tax return, in-scope MNE groups are required to submit a GloBE Information Return (GIR), with the correct identification of the liable entity playing a central role. Furthermore, the introduction of the minimum tax affects existing cantonal incentive regimes and raises questions regarding potential conflicts with domestic law and applicable international accounting standards.

Registration obligations

In connection with the OECD's Pillar Two, initial registrations have already had to be made by MNE groups or their local entities in several countries, and in some cases tax returns have already been filed. In Switzerland, the minimum tax is governed by the Ordinance on Minimum Taxation (MindStV). This Ordinance was last amended on 1 January 2026, with additional provisions added regarding the GloBE Information Return.

The MindStV provides for two separate reporting obligations:

- the tax return for the international and national top-up tax; and
- the GIR in accordance with the OECD's Pillar Two model rules.

The top-up tax is generally determined separately for each tax jurisdiction, and an MNE group may have several business units in different cantons within Switzerland. The Federal Council has opted for the "one-stop shop system". As a rule, only one business unit per group – namely the business unit liable for top-up tax – is to be liable for the declaration of top-up tax. For registration, the submission of the top-up tax return, communication with the tax authorities and the assessment, it is crucial that the business unit liable for top-up tax is correctly identified. The determination of which business unit is liable for top-up tax is made in accordance with Article 5 of the MindStV.

The business entity liable for top-up tax is required to submit the top-up tax return under Pillar Two for the financial year beginning in 2024 within 18 months after the end of the financial year – ie, by 30 June 2026 at the latest if the financial year ended on 31 December 2024. The return must be submitted electronically and requires prior, unsolicited registration of the taxable business entity in the OMTax system (access via the Federal Government's ePortal). Such registration and declaration are required regardless of whether there is a sufficient tax burden of at least 15% or whether top-up tax is due.

In addition to the top-up tax return, a separate reporting obligation – the GIR – is applicable for the same period as the top-up tax obligation (ie, 2024 as the first year). Basically, the same entity in Switzerland that is liable for top-up tax is required to register and submit the GIR. The same as for the top-up tax, for the financial year beginning in 2024 the liable entity has to register and file the GIR within 18 months after the end of the financial year – ie, by 30 June 2026 at the latest if the financial year ended on 31 December 2024. The GIR must be submitted electronically by the liable entity in the new GIR system (access via the Federal Government's ePortal).

Swiss incentive measures that are in line with Pillar Two

To maintain their attractiveness as business locations, some cantons have introduced new incentive instruments that are compatible with the OECD's minimum tax requirements whilst complementing existing instruments. One focus is on refundable tax credits

(Qualified Refundable Tax Credits – QRTC) and direct payments. At the time of writing, initial cantonal regulations have already been adopted in Basel-Stadt, Graubünden and Zug, whilst Lucerne is in the legislative process and other cantons such as Geneva, Schaffhausen, St. Gallen and Zurich are discussing corresponding models.

The regulations of the cantons of Basel-Stadt, Graubünden, Lucerne and Zug reveal a largely similar institutional structure. It is generally the relevant economic development office rather than the tax authority that is responsible for assessing and approving applications. Applications must be submitted in the year following the respective financial year, with the submission deadline falling between three and six months after the end of the financial year, depending on the canton, and cannot be extended.

Legally, the new support instruments are usually regulated in separate economic development laws rather than in the cantonal tax laws. Whilst the canton of Graubünden provides exclusively for refundable tax credits, other cantons offer both refundable tax credits and direct payments. The incentives are typically based on a percentage of certain costs, such as personnel expenses in the field of research and development. For direct payments, the cantons generally set a limited annual funding budget, and contributions will be reduced proportionally if the total amount of applications exceeds this budget.

Potential for conflict

With existing Swiss incentive measures

The introduction of the OECD minimum tax has significant implications for existing tax incentive schemes in Switzerland. Tax incentives that previously reduced the tax base for corporate income tax – such as the patent box or the additional deduction for research and development expenditure – as well as instruments that allow for partial or full tax exemption (so-called tax holidays) are increasingly losing their effectiveness for large MNE groups. At the same time, the relative attractiveness of direct government support measures could increase – for example, in the form of subsidies or so-called refundable tax credits. In the long term, this could lead to a shift away from indirect tax incentives towards direct government support, thereby creating new conflicts of interest in terms of tax policy and the economy.

Differing accounting standards

Potential conflicts also arise from differing accounting standards. Whilst the tax base in Switzerland is closely aligned with financial statements prepared in accordance with the Swiss Code of Obligations (OR), international accounting standards such as Swiss GAAP FER, IFRS or US GAAP may lead to differing results. These differences relate, among other things, to the valuation of assets, the recognition of provisions or the treatment of deferred taxes. This creates a tension between national tax regulations and internationally applied accounting standards. In the context of Pillar Two, a financial statement following OR standards does not qualify as a “qualified financial statement”.

“Side-by-side system”

A further area of conflict may arise from the introduction or application of a so-called side-by-side system for Pillar Two. Under this system, different tax regimes are recognised as comparable to the Pillar Two GloBE system, to ensure a minimum taxation and exist in parallel. This raises questions regarding the equal treatment of companies and individual countries, and also calls into question, at least in part, the integrity of the rules on the global minimum tax.

Latest Court Decisions

In May 2025, the Swiss Federal Supreme Court ruled on the taxation of employee share schemes involving a change of residence, addressing the vesting period and the proportional taxation of benefits earned during periods of work in both Switzerland and Spain. The Court determined that the benefits acquired up to 16 August 2018 could be taxed in Switzerland based on the work performed there. The Court also dealt with two other complex cases: one regarding hidden profit distributions involving multinational loans, and another concerning offshore fund management fees, where the lack of operational infrastructure led to tax evasion concerns in Switzerland. The rulings highlighted the importance of determining the substance of transactions for tax purposes.

Employee share schemes (case 9C_13/2025 from 1 May 2025)

Background

In May 2025, an interesting ruling was handed down concerning the international allocation of taxing rights in relation to employee share schemes involving a change of residence. The ruling was based on the following facts: A worked for Group B from 1 November 2009 to 15 August 2018. Due to a restructuring within the company, she was made redundant, with her employment contract ending on 15 August 2018. During this period, she worked in Spain from 1 November 2009 to 31 August 2016 and in Switzerland from 1 October 2016 to 15 August 2018. Despite the termination of her employment, she retained her rights under various employee share schemes operated by B. In the 2020 tax year, she received income totalling CHF91,111 from the exercise/realisation of these employee share rights, on which a withholding tax of CHF28,699.80 was levied. Specifically, the vesting period of the employee shareholdings is in dispute, as is the scope of Swiss taxing rights in relation to these shareholdings from the perspective of domestic law and treaty law.

Cantonal court decision (first instance)

In application of the provision of Article 17d DBG, the cantonal court of first instance correctly found that the employee shareholdings in question are subject to (withholding) tax at the time of their exercise. However, this does not yet clarify the question of the reference period to be used for determining proportional taxation.

Federal Supreme Court decision

The Federal Supreme Court concluded that the lower court had not arbitrarily determined that the vesting period for the employee share options allocated to A ended on 16 August 2018. It was therefore able to conclude that the benefits acquired by A up to that point could be taxed in Switzerland in proportion to the working hours performed in Switzerland since the acquisition of the shares in question. The fact that Spain, as the country of residence, attributes income differently from Switzerland, as the source country, does not allow the assumption that the latter state has misapplied Article 15 of the CH-ES DTA.

Hidden profit distributions

The issue of hidden profit distributions is a recurring subject of judicial debate, mostly in connection with complex corporate structures, as demonstrated by two judgments from March 2025 and December 2025.

Court case 1 (case 9C_465/2024 and 9C_466/2024 from 21 March 2025)

In the judgment of March 2025, the taxpayer husband is the sole shareholder of various companies. Malta-based I.H. Ltd., a subsidiary of the Maltese parent company H.H. Ltd. held by him, granted a loan worth millions to the Swiss company C. AG, which he holds directly. C. AG, for its part, also granted a loan to the German company F. GmbH, held directly by the taxpayer husband. Applying the triangle theory, the lower court attributed the latter to the taxpayer spouse as income from movable assets (hidden distribution of profits). Since the cantonal tax administration had already attributed the Maltese companies to the taxable spouses for wealth tax purposes in the 2014 tax period (transparent treatment), the question arose before the Federal Supreme Court as to whether it was appropriate, on the one hand, to attribute the assets of the Maltese company I.H. Ltd. – including the loan claim against C. AG – to the taxable couple for tax purposes, whilst at the same time holding the taxable spouses accountable under Article 20, paragraph 3 DBG (in relation to the hidden distribution of profits) on the grounds that the funds transferred to C. AG did not originate from them.

Federal Supreme Court decision

The Federal Supreme Court did not examine this question in depth, as it was clear from the annual accounts of C. AG that the monetary benefit provided by C. AG to its German sister company had not involved any actual repayment or reduction of the loan claim, nor any withdrawal of the capital contribution. Furthermore, the Federal Supreme Court upheld the set-off of further monetary benefits against the taxpayer husband in his capacity as a shareholder of the companies concerned.

Court case 2 (9C_521/2025 from 17 December 2025)

The subject of the legal dispute in the judgment handed down in December 2025 is the fees for the

management of a fund. The lower court found that B. SA had organised the fund management through offshore companies that had no demonstrable operational infrastructure. As a result, management fees that would ordinarily have been subject to taxation in Switzerland were not taxed. B. SA had thus created a system that enabled the transfer of income generated by the structures acting as managers of Fund C to related parties. This fulfilled the first condition for tax avoidance. With regard to the second requirement, it emerged that the only plausible reason for the chosen structure was that the profits generated from management activities were not taxed in Switzerland, but only those from advisory activities.

UK



Law and Practice

Contributed by:
Russell Warren and Michael Langan
King & Spalding LLP

Contents

1. Sources and Principles p.485
1.1 Domestic Sources of International Tax Law p.485
1.2 Hierarchy of Sources p.485
1.3 OECD Model/United Nations Influence on Treaty Practice p.485
1.4 Multilateral Instrument p.485

2. Territoriality, Residence and Permanent Establishment p.485
2.1 General Principle of Territorial Taxation p.485
2.2 Tax Residence of Individuals p.486
2.3 Taxation of Resident Individuals p.486
2.4 Taxation of Non-Resident Individuals p.486
2.5 Tax Residence of Legal Entities p.486
2.6 Definition of Permanent Establishment p.486

3. Taxation of Cross-Border Income p.486
3.1 Income From Immovable Property p.486
3.2 Business Profits p.486
3.3 Passive Income p.487
3.4 Capital Gains p.487
3.5 Employment Income p.487
3.6 Other Income p.487

4. OECD/G20 Global Tax Reform p.487
4.1 Pillar One – Amount B p.487
4.2 Pillar One – Amount A p.487
4.3 Pillar Two p.487
4.4 Specific Features or Deviations of Pillar Two p.488
4.5 Digital Services Tax p.488

5. Anti-Avoidance and Anti-Evasion Measures p.488
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.488
5.2 Anti-Avoidance Mechanisms p.488
5.3 Blacklists and Non-Cooperative Jurisdictions p.489
5.4 Reporting Obligations and Disclosure Regimes p.489
5.5 Role of Tax Authorities and Enforcement Measures p.489

6. Penalties and Sanctions p.490
6.1 Tax Penalties p.490
6.2 Criminal Penalties p.490
6.3 Interaction Between Tax and Criminal Procedures p.490

7. Administrative Co-Operation p.490
7.1 Legal Framework for Administrative Co-Operation p.490
7.2 Exchange of Information Clauses in Tax Agreements p.490
7.3 Other Forms of International Tax Collaboration p.491

8. Mutual Agreement Procedures and Arbitration p.491
8.1 Availability and Legal Basis p.491
8.2 Application Deadlines p.491
8.3 Mandatory Binding Arbitration p.491

9. Dispute Prevention p.491
9.1 Advance Pricing Agreements p.491
9.2 Other Mechanisms p.491

King & Spalding LLP is an international law firm established over 130 years ago that today has more than 1,300 lawyers in 26 offices globally. The firm has represented a broad array of clients in over 160 countries on six continents and is consistently recognised for the results it obtains and its dedication to understanding the business and culture of its clients. Long-standing values and client-service principles guide the lawyers' approach to delivering practical solutions and building relationships with clients and colleagues that are professionally and personally rewarding. Those who consult the firm see these values and principles in action every day – in how the lawyers work together collaboratively across practices and time zones; in the level of support their clients receive from day one; in the guidance and training the team provides; and in the lawyers' commitment to supporting the communities in which they live and work.

Authors



Russell Warren specialises in transactional tax matters, with particular expertise in private equity and asset management. A partner in King & Spalding's tax practice, he advises financial sponsors, corporate groups and financial institutions on a range of complex cross-border tax matters. Russell advises on the tax aspects of a wide range of domestic and cross-border transactions, including acquisitions, disposals, carve-outs, de-mergers, reorganisations, refinancings and joint ventures. His experience spans advising private equity sponsors on acquisitions and exits, management teams on equity arrangements, and corporates on strategic reorganisations and disposals. Russell also often speaks at industry conferences and regularly contributes to thought leadership.



Michael Langan is a senior associate in King & Spalding's tax department in London, where he focuses on complex transactional and advisory matters. He has extensive knowledge in advising clients on tax projects globally and deals with cross-border financings, acting for a variety of financial institutions as well as alternative credit advisers. He also advises on cross-border mergers and acquisitions (with a particular focus on the private equity sector) and is experienced in the implementation of employee reward schemes, both for large corporates and private equity sponsors. Michael has additional experience advising on HMRC enquiries and working with clients and HMRC to reach mutually satisfactory outcomes.

King & Spalding LLP

8 Bishopsgate
London
EC2N 4BQ
United Kingdom

Tel: +44 20 7551 7500
Web: www.kslaw.com

1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The main sources of international tax law in the UK are domestic tax legislation (primarily enacted by parliament), secondary legislation and case law arising from UK tax tribunals and courts. Following Brexit and the enactment of the Retained EU Law (Revocation and Reform) Act 2023, the UK is no longer bound by EU tax directives. Administrative co-operation now rests on OECD instruments, the Foreign Account Tax Compliance Act (FATCA) and bilateral treaties.

The UK has an extensive network of treaties and international agreements with over 100 countries. These are designed to prevent double taxation and fiscal evasion and allow for the exchange of information. Double tax treaties are given effect by domestic legislation (TIOPA 2010 and statutory orders). In practice, treaties can therefore modify the application of UK domestic law.

The UK's treaties are regularly updated, especially in response to OECD Base Erosion and Profit Shifting (BEPS) initiatives. The UK also participates in multilateral instruments (under the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS)) and follows OECD guidelines for transfer pricing and country-by-country reporting.

1.2 Hierarchy of Sources

Domestic tax law is primary, but international treaties (such as double tax treaties) override domestic law where there is a conflict, provided the treaty has been incorporated into UK law by way of ratification of the relevant treaty. A double tax treaty cannot, however, impose a tax charge where one does not exist under UK domestic law.

1.3 OECD Model/United Nations Influence on Treaty Practice

The UK generally follows the OECD Model Tax Convention in its treaty practice, with some deviations to reflect UK-specific policy or negotiation outcomes with counterparty jurisdictions. A number of these treaties (primarily with jurisdictions that were previously colonies of the UK) were entered into prior to the publication of the OECD model. The UK has also adopted specific provisions from the United Nations Model Double Taxation Convention in certain treaties with developing countries. These provisions tend to provide greater taxing rights to the counterparty jurisdiction as compared to the OECD model.

1.4 Multilateral Instrument

The UK signed the Multilateral Instrument (MLI) on 7 June 2017 and ratified it on 29 June 2018. It has been in effect in the UK since 1 October 2018. The date the MLI takes effect for any particular treaty with the UK will depend on the date the counterparty jurisdiction in question ratifies its signatory to the MLI.

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

The UK operates a worldwide basis of taxation for individuals who are resident in the UK.

From 6 April 2025, the UK abolished the non-domicile regime so that individuals who come to the UK from April 2025 will have a maximum of a four-year transitional period (which is reduced accordingly for individuals arriving after 6 April 2025) where they are not subject to foreign income and gains (FIG). Following the expiry of this four-year period, individuals will be fully taxable on worldwide income and gains. There is a temporary repatriation facility for previous remittance-basis users to remit FIG at reduced tax rates (12% in the tax years 2025/2026 and 2026/2027 and 15% in 2027/2028). Previous remittance-basis users can also "rebase" foreign assets to their value on 5 April 2019.

Non-residents are subject to tax only on UK source income (eg, UK rental income and income attributable to a UK permanent establishment) and gains arising directly or indirectly on UK real estate.

There are devolved taxes in Scotland, Wales, and Northern Ireland, with some local variations (eg, Land and Buildings Transaction Tax in Scotland).

2.2 Tax Residence of Individuals

The UK uses the Statutory Residence Test, which can treat individuals as automatically non-UK resident or automatically UK resident. For the former, individuals will always be non-UK resident:

- if the individual has been UK tax resident in one of the last three tax years, if they spend fewer than 16 days in the UK; or
- if they spend fewer than 45 days in the UK where they have been UK tax resident in any of the three preceding tax years; or
- the individual works full time overseas for the whole tax year with no significant breaks, spends fewer than 91 days in the UK and fewer than 31 work days in the UK.

If an individual does not satisfy the automatic tests for non-residents, then there are automatic UK residence tests. These are, broadly:

- the day count test – if the individual spends 183 or more days in the UK in the tax year; or
- the UK home test – if the individual has a home in the UK for 91 or more consecutive days (part of which falls in the tax year), uses it for at least 30 days, and either has no overseas home or spends fewer than 30 days in any overseas home; or
- the UK work test – if the individual works sufficient hours in the UK over a 365-day period where all or part of the 365-day period is in the current tax year with no significant breaks from UK work.

If the conditions of neither test are met, then residence is determined by reference to "sufficient ties" to the UK. This factor considers UK connections, such as family, work and accommodation, with fewer ties required the more days an individual spends in the UK.

2.3 Taxation of Resident Individuals

UK tax residents are subject to worldwide taxation on income and gains, subject to any treaty relief or domestic law exemptions.

See **2.1 General Principle of Territorial Taxation** for further details on the transitional FIG and temporary repatriation provisions applicable following the abolition of the "non-dom" regime.

2.4 Taxation of Non-Resident Individuals

Non-residents are taxed on UK-source income, including employment income for duties performed in the UK, rental income from UK property, and certain capital gains (especially on UK property). The UK applies withholding tax on annual UK-source interest at a rate of 20% (increasing to 22% from 6 April 2027) but this is subject to treaty relief as well as other exemptions for non-residents. There is also withholding tax at a rate of 20% for UK royalties, which is again subject to treaty relief. The UK has a wide-ranging network of treaties, many of which provide full relief for withholding tax, but clearance must be received from His Majesty's Revenue and Customs (HMRC) to make interest payments at the treaty rate.

2.5 Tax Residence of Legal Entities

A company is UK tax resident if it is incorporated in the UK or if its central management and control is exercised in the UK.

2.6 Definition of Permanent Establishment

The UK's definition of "permanent establishment" is broadly aligned with the OECD Model, focusing on a fixed place of business or a dependent agent. Treaty definitions generally follow the OECD Model, with some variations depending on the specific treaty. HMRC is in the consultation process for the purposes of more closely aligning the UK's rules on permanent establishment with the latest international consensus on the definition of a permanent establishment and the attribution of profits to a permanent establishment.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

Rental income from UK property is taxable in the UK for both residents and non-residents. Since April 2020, non-resident companies receiving UK property income are subject to UK corporation tax.

3.2 Business Profits

Business profits of UK resident companies are taxed on worldwide income at the corporation tax rate (25% standard, with a small profits rate of 19% up to GBP250,000). Non-resident companies are taxed on profits attributable to a UK permanent establishment.

3.3 Passive Income

Dividends received by UK-resident companies are subject to UK corporation tax. However, there are broad exemptions which generally operate to fully exempt dividends received by UK-resident companies.

There is no withholding tax on dividends.

Interest and royalties are subject to 20% withholding tax (although the withholding tax rate on interest is set to increase to 22% from 6 April 2027), but this can be reduced or eliminated under double tax treaties.

There are also statutory exemptions to withholding tax on interest including:

- the quoted Eurobond exemption, which provides a full exemption from UK withholding tax on interest on quoted Eurobonds;
- payments to UK companies, although the interest is generally still subject to UK corporation tax on receipt;
- payments to UK banks and building societies, although the interest is generally still subject to UK corporation tax on receipt; and
- the Qualifying Private Placement exemption, which provides a full exemption from UK withholding tax.

Rental income is subject to taxation at up to 47% for individuals, while businesses are subject to UK corporation tax at 25%. Rental income is subject to UK withholding tax at 20% (set to increase to 22% as of 6 April 2027). However, most landlords benefit from gross payment through the non-resident landlord scheme, so there is rarely any withholding tax in practice.

3.4 Capital Gains

UK tax-resident companies are subject to UK corporation tax on worldwide chargeable gains, subject to any exemptions or reliefs (such as the UK participation exemption) at a rate of up to 25%. Non-UK tax-resident companies are subject to UK corporation tax at a rate of up to 25% on profits attributable to a UK permanent establishment.

UK tax resident individuals are subject to progressive rates of UK capital gains tax up to 24% and subject to a GBP3,000 annual tax-free allowance. Reliefs, which can reduce the rate to 18%, subject to a lifetime maximum of GBP1 million, and deferrals are available in certain circumstances. There is also an exemption for the disposal of a principle private residence.

UK non-residents are subject to non-resident capital gains tax on direct or indirect disposals of UK land. Non-resident individuals are subject to UK capital gains tax on non-resident gains; non-resident companies are subject to UK corporation tax on non-resident gains.

3.5 Employment Income

Employment income is taxed on a worldwide basis for residents. Non-residents are taxed on UK duties. There are special rules for short-term assignments and overseas workday relief for new arrivals. Remote working is subject to the same principles, with tax based on where duties are performed.

3.6 Other Income

The UK has special rules for digital services tax, apprenticeship levy, diverted profits tax (subject to a higher rate of UK corporation tax) and annual tax on enveloped dwellings (ATED) for residential property held by companies.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Although the UK has approved the OECD's Consolidated Report on Amount B (published on 24 February 2025), it has not formally adopted Amount B.

4.2 Pillar One – Amount A

The UK government's preference is to implement Pillar One and remove the UK's Digital Services Tax (DST). However, it has delayed the expected implementation timeline to October 2027.

4.3 Pillar Two

The UK's implementation of the global minimum tax rules took effect through enactment of the Finance (No 2) Act 2023 on 11 July 2023, which applies to

accounting periods starting on or after 31 December 2023.

4.4 Specific Features or Deviations of Pillar Two

The UK's implementation of the global minimum tax has broadly followed the OECD model.

The UK has, however, developed its own separate body of tax law (Multinational Top-up Tax (MTT)) to implement the (Global Anti-Base Erosion) GloBE rules, focusing on achieving the same results as the OECD rules without being a direct word-for-word copy.

The main difference between the OECD and UK model rules lies in the UK's MTT, which operates by way of an Income Inclusion Rule and a domestic top-up tax (DTT). The DTT extends the scope of Pillar Two rules to UK operations. The UK's MTT qualifies, nonetheless, as a Qualified Domestic Minimum Tax for the purposes of the OECD model.

4.5 Digital Services Tax

The UK introduced a DST from April 2020, applying a 2% tax on UK revenues of certain digital businesses with significant UK user participation above a certain threshold for both global and UK revenue. DST remains until Pillar One Amount A takes effect, at which point, the UK intends to transition away from DST.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax fraud is regarded as the deliberate deception of HMRC.

Tax evasion is a narrower offence of deliberately not paying the right amount of tax.

Tax avoidance is a concept that has evolved through case law and is now generally considered to be the use of legal means to reduce a tax liability. A hallmark of avoidance is the reliance on an artificial interpretation of the legislation which does not reflect parliament's intention and which does not adopt a realistic view of the facts in question.

For VAT purposes, avoidance adopts an abuse-of-rights principle based on EU case law principles. Under this principle, a transaction is abusive if it aims to achieve an advantage from the VAT rules that is contrary to the purpose of those rules. This principle has been retained post-Brexit in the Taxation (Cross-border Trade) Act 2018.

5.2 Anti-Avoidance Mechanisms

The UK has a robust system of anti-avoidance and anti-evasion legislation. These fall into one of three broad categories:

- disclosure rules designed to inform HMRC about tax arrangements in real time;
- powers to enable HMRC to investigate and recover unpaid tax; and
- sanctioning of advisers who promote these arrangements.

The Disclosure of Tax Avoidance Rules and Disclosure of Avoidance Schemes – VAT and other Indirect Taxes, provide an early-warning system for HMRC of emerging avoidance schemes. Taxpayers are obliged to inform HMRC about transactions which bear certain "hallmarks". These include wishing to keep aspects of the arrangements confidential from HMRC, or promoters of the arrangements charging a premium fee attributable to the tax advantage obtained.

The Mandatory Disclosure Rules require promoters and advisers to inform HMRC of arrangements involving opaque offshore structures or if a structure circumvents reporting under the Common Reporting Standard. These rules replaced the DAC 6 cross-border disclosure rules.

HMRC is empowered to serve notices to seek information from taxpayers and third parties. These include:

- a taxpayer notice requiring information or documentation relevant to the taxpayer's tax position;
- a third-party notice requiring information or documentation relevant to a taxpayer's tax position;

- a financial institution notice requiring banks and other financial institutions to provide information or documentation relevant to a taxpayer's tax position;
- an "identity unknown notice" requiring a third party to provide information or documentation relevant to a taxpayer whose identity is not known to HMRC; and
- an "identity not fully known notice" requiring a third party to provide the name, address and date of birth of a taxpayer.

The UK's General Anti-Abuse Rule (GAAR) seeks to identify "abusive" tax arrangements. The GAAR applies to any arrangement which cannot reasonably be regarded as a reasonable course of action in relation to the tax provisions – the so-called "double reasonableness" test. The GAAR empowers HMRC to make just and reasonable adjustments so as to enable it to recover any lost revenue.

HM Treasury announced a new whistle-blowing rewards scheme in the Budget 2025. This will replace the existing scheme for reporting tax non-compliance to HMRC. The new scheme will focus on serious non-compliance by large corporate and wealthy individuals and, where the information provided leads to the collection of at least GBP1.5 million in tax, individuals could receive between 15% and 30% of the tax collected (excluding interest and penalties). This brings the UK in line with many international schemes such as those operated in the US and Canada.

The Promoters of Tax Avoidance Scheme rules empower HMRC to sanction advisers who engage in promoting tax avoidance arrangements. These include enabling HMRC to issue "stop notices", prohibiting the promotion of an arrangement; "conduct notices", non-compliance with which can lead to the issuing of "monitoring notices", which may result in advisers being named and shamed by HMRC; and applying to court for the winding-up of a business promoting avoidance schemes.

A taxpayer who has used an avoidance scheme which has, broadly, been defeated by HMRC may be served with a "follower notice" or "accelerated payment notice" requiring it to amend its return or drop its appeal in accordance with the defeated scheme. If the taxpayer fails to do so, it may be issued with a penalty.

HMRC may also issue a penalty under the Enabler Penalties regime on advisers who enable taxpayers to enter into abusive tax arrangements that are subsequently defeated. A defeat arises when the tax advantage in question is counteracted, whether by an adjustment to a tax return or an HMRC assessment, and it cannot be further appealed. The definition of "abusive" largely follows the definition in the GAAR.

The Serial Tax Avoiders Regime imposes penalties on taxpayers who repeatedly use schemes which have been defeated by HMRC under specific regimes. These are the GAAR, "follower notices" or the disclosure of tax avoidance schemes/disclosure of avoidance schemes for VAT and other indirect taxes (DOTAS/DASVOIT).

5.3 Blacklists and Non-Cooperative Jurisdictions

The UK does not maintain a list of non-cooperative or high-risk jurisdictions for tax purposes.

5.4 Reporting Obligations and Disclosure Regimes

See **5.2 Anti-Avoidance Mechanisms**.

5.5 Role of Tax Authorities and Enforcement Measures

HMRC is empowered under the Police and Criminal Evidence Act 1984 to:

- Undertake searches under warrants issued by a magistrate if there are reasonable grounds to believe an indictable tax offence has been committed and there is material of substantial value or admissible in trial in relation to that offence. HMRC may also seize and retain anything for which a search has been authorised.
- Apply to a judge to issue a production order to a third party if there are reasonable grounds to suspect an offence involving serious tax fraud, or an order for documents that are in the power or possession of any person and may be required as evidence for the purposes of any proceedings concerning an offence.

- Arrest, without a warrant, anyone:
  (a) who is about to commit a tax offence;
  (b) who is in the act of committing a tax offence;
  (c) whom the HMRC officer has reasonable grounds to suspect might be about to commit a tax offence; and
  (d) whom the officer has reasonable grounds to suspect is in the process of committing a tax offence.
- Search and enter premises to make an arrest.

Also see **5.2 Anti-Avoidance Mechanisms**.

6. Penalties and Sanctions

6.1 Tax Penalties

The UK has a wide range of domestic legislation which imposes penalties on cross-border tax avoidance, such as the transfer pricing legislation in the Taxation (International and Other Provisions) Act 2010, the Taxation (Cross-border) Trade Act 2018, as well as more general provisions such as the GAAR. There is also an extensive framework governing the reporting of cross-border transactions. This includes the UK's Mandatory Disclosure Rules (which replace DAC6) as well as international law incorporated into UK law, such as the CRS and reporting provisions within double tax treaties. HMRC is responsible for imposing and enforcing sanctions in connection with cross-border transactions and for reporting any non-compliance.

6.2 Criminal Penalties

There is a broad array of penalties for tax fraud and evasion in the UK, ranging from fines (which can be unlimited) to a prison sentence of up to life in the most serious cases. The Criminal Finances Act 2017 also makes businesses (wherever located, in respect of facilitating UK tax evasion, and companies with a UK connection, in respect of the facilitation of non-UK tax evasion) criminally liable for failure to prevent their employees or any person associated with them from facilitating tax evasion. While the offence is one of strict liability, there is a defence where the business has reasonable prevention measures in place.

6.3 Interaction Between Tax and Criminal Procedures

HMRC will initially carry out an information-gathering exercise in instances of tax fraud, and has various statutory tools to assist with information gathering, such as production orders which compel various third parties (eg, banks) to provide information and documents. HMRC will then prepare a file for the Crown Prosecution Service (CPS, for domestic tax evasion) or the Serious Fraud Office/National Crime Agency (for foreign tax offences) which summarises all of its allegations and provides all the evidence gathered. There are statutory provisions within the Economic Crime and Corporate Transparency Act 2023 which provide for co-operation in the information sharing and investigation of tax fraud between HMRC and the CPS. The final decision to bring a prosecution rests with the CPS or, where applicable, the Serious Fraud Office.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

The UK is party to a wide range of measures aimed at facilitating co-operation in tax matters with other jurisdictions. These include exchange of information provisions in double tax treaties, tax information and exchange agreements with many jurisdictions (in line with the OECD Model Convention), the CRS and FATCA.

7.2 Exchange of Information Clauses in Tax Agreements

The UK has extensive agreements and provisions which address the exchange of information with other jurisdictions. These include automatic exchange of pre-defined data, through the CRS and FATCA regimes. Double tax treaties, tax information exchange agreements and the OECD Multilateral Convention also provide for spontaneous exchange of information. In addition, UK double tax treaties and the CRS provide for the sharing of information on request.

7.3 Other Forms of International Tax Collaboration

See **7.1 Legal Framework for Administrative Co-Operation** and **7.2 Exchange of Information Clauses in Tax Agreements** for the framework for collaboration as set out in bilateral treaties and the OECD Multilateral Convention. The UK also participates in the OECD's International Compliance Assurance Programme (ICAP) and has done so since its inception in 2018. The ICAP provides a framework for multinational enterprises and tax authorities to exchange information and perspectives on country-by-country reports.

The UK also participates in both joint and simultaneous tax audits, exchanging information with a view to establishing a consistent set of facts in the former, while the latter involves a more extensive and co-ordinated effort with the goal of reaching agreement on both the facts and tax treatment of cross-border transactions.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

The UK has a mutual agreement procedure (MAP) programme which is given statutory effect in the Taxation (International and Other Provisions) Act 2010. The vast majority of the UK's double tax treaties contain a MAP article.

8.2 Application Deadlines

Where the MAP is invoked under a double tax treaty, the case must be presented before the expiration of a period of six years following the end of the chargeable period to which the case relates; or such longer period as may be specified in the treaty. Many UK tax treaties follow Article 25 of the Model Convention such that a person must present their case "[with]in 3 years of the first notification of the action which results or is likely to result in double taxation". Accordingly, the tax treaty may extend the statutory six-year time limit.

8.3 Mandatory Binding Arbitration

The UK provides for MAPs under its treaties, with legal bases in domestic law and treaties. Deadlines and the availability of arbitration depend on the specific treaty.

See **7.1 Legal Framework for Administrative Co-Operation** and **7.2 Exchange of Information Clauses in Tax Agreements** for further details on MAP.

Mandatory binding arbitration is available but only where specifically provided for in the relevant double tax treaty (or where the relevant arbitration provisions of the MLI have been incorporated into the double tax treaty). Mandatory binding arbitration can typically be considered where the MAP has not resolved the dispute within a two- (or three-) year period. While HMRC is generally in favour of mandatory binding arbitration, the specific double tax treaty (or list of reservations of the MLI) should be considered in all cases.

9. Dispute Prevention

9.1 Advance Pricing Agreements

Part 5 of the Taxation (International and Other Provisions) Act 2010 provides the legislative basis for tax payors to enter into advance pricing agreements (APAs) with HMRC. There is also extensive HMRC guidance and a statement of practice which sets out the legal framework within which an APA may be entered into. APAs can be either unilateral or multilateral, with the former entered into between HMRC and the tax payor and providing certainty only in relation to the transfer pricing treatment in the UK.

9.2 Other Mechanisms

As per **9.1 Advance Pricing Agreements**, the UK provides APAs on a unilateral and multilateral basis.

Large Business Compliance Manager Programme

The UK also provides a Large Business Compliance Manager programme for businesses with an annual turnover of more than GBP200 million, or which operate in a complex sector or which have complex tax affairs. This involves a more hands-on approach, with regular interaction with large businesses to allocate them a "risk" rating and to work collaboratively with

the tax payor to ensure it remains in compliance with its tax obligations.

Advance Thin-Cap Pricing Agreements

Similar to APAs, advance thin-cap pricing agreements provide certainty in the context of intercompany financings in areas such as debt levels, interest rates and availability of interest deductions. Unlike APAs, however, these agreements are always unilateral and agreed only with HMRC.

Non-Statutory Clearance Applications

Taxpayers may also make applications to HMRC for non-statutory clearances in respect of certain transactions. Such applications are typically made in areas where tax law is unclear and they require full disclosure of the transaction and surrounding facts to HMRC. Applications can be made both by individual tax payors and by businesses.

Profit Diversion Compliance Facility

HMRC launched the Profit Diversion Compliance Facility in 2019. This is a voluntary scheme introduced by HMRC to encourage businesses to voluntarily review and adjust their transfer pricing position. It is mainly designed to encourage engagement with HMRC where there are concerns around profit diversion, particularly to lower-tax jurisdictions.

Trends and Developments

Contributed by:
Russell Warren and Michael Langan
King & Spalding LLP

King & Spalding LLP is an international law firm established over 130 years ago that today has more than 1,300 lawyers in 26 offices globally. The firm has represented a broad array of clients in over 160 countries on six continents and is consistently recognised for the results it obtains and its dedication to understanding the business and culture of its clients. Long-standing values and client-service principles guide the lawyers' approach to delivering practical solutions and building relationships with clients and colleagues that are professionally and personally rewarding. Those who consult the firm see these values and principles in action every day – in how the lawyers work together collaboratively across practices and time zones; in the level of support their clients receive from day one; in the guidance and training the team provides; and in the lawyers' commitment to supporting the communities in which they live and work.

Authors



Russell Warren specialises in transactional tax matters, with particular expertise in private equity and asset management. A partner in King & Spalding's tax practice, he advises financial sponsors, corporate groups and financial institutions on a range of complex cross-border tax matters. Russell advises on the tax aspects of a wide range of domestic and cross-border transactions, including acquisitions, disposals, carve-outs, de-mergers, reorganisations, refinancings and joint ventures. His experience spans advising private equity sponsors on acquisitions and exits, management teams on equity arrangements, and corporates on strategic reorganisations and disposals. Russell also often speaks at industry conferences and regularly contributes to thought leadership.



Michael Langan is a senior associate in King & Spalding's tax department in London, where he focuses on complex transactional and advisory matters. He has extensive knowledge in advising clients on tax projects globally and deals with cross-border financings, acting for a variety of financial institutions as well as alternative credit advisers. He also advises on cross-border mergers and acquisitions (with a particular focus on the private equity sector) and is experienced in the implementation of employee reward schemes, both for large corporates and private equity sponsors. Michael has additional experience advising on HMRC enquiries and working with clients and HMRC to reach mutually satisfactory outcomes.

King & Spalding LLP

8 Bishopsgate
London
EC2N 4BQ
United Kingdom

Tel: +44 20 7551 7500
Web: www.kslaw.com

Proposed Reform to the PE Definition and IME

Permanent establishment

Following a consultation in 2023, the UK plans to update its definition of permanent establishment (PE). The new rules align more closely with Article 5 of the OECD Model Tax Convention on Income and on Capital.

This results in the broadening of the "dependent agent" concept so that it captures a person acting on behalf of a non-resident company who "habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts, that are routinely concluded without material modification by the company".

Investment management exemption

This is countered, to some extent, by the broadening of the Investment Management Exemption (IME). The IME allows non-resident investors to appoint UK-based investment managers without creating a UK PE. These rules will be amended to remove elements which have created uncertainty for the overseas investor community, such as the removal of the requirement that the UK investment manager could not be entitled to more than 20% of the non-resident's profits.

Carbon Border Adjustment Mechanism

Introduced by the 2025 Budget, the Carbon Border Adjustment Mechanism (CBAM) will come into effect on 1 January 2027 and will be implemented by secondary legislation that is subject to consultation at the time of publication of this report.

The CBAM will affect importers in the aluminium, cement, fertilisers, hydrogen, and iron and steel sectors, as well as downstream producers that use these goods.

It will apply when such goods are imported into the UK and will be payable by the importer.

The CBAM payable will be calculated by, broadly, multiplying the imported emissions by the CBAM rate and deducting the relevant imported embodied emission by the effective carbon price. The deduction therefore provides relief for any overseas carbon pricing scheme that meets certain criteria.

The CBAM rate is the tax rate that will be set with reference to the effective carbon pricing mechanism, the UK Emission Trading Scheme.

If the value of the CBAM relevant imports exceeds the GBP50,000 minimum, the importer will be required to register with HMRC. Much like the VAT registration rules, the GBP50,000 minimum will be tested on a 30-day look-forward basis and a 12-month look-back basis.

The Abolition of the Non-Dom Regime

History

On 6 April 2025, the UK's non-domiciled tax rules were abolished. These had been in place for over 200 years and afforded "non-doms" an exemption from UK tax for income and gains held outside the UK.

The non-dom regime allowed those who were not domiciled in the UK to elect to be taxed only on their UK-source income and gains. Income and gains arising outside the UK were not taxed in the UK unless they were remitted to the UK.

In a nod to the slightly archaic nature of the regime, an individual could assert non-dom status if, broadly, their father was born outside the UK or, more onerously, if they could establish a domicile of choice outside the UK.

This regime came to an end at the end of the 2024/25 tax year.

New FIG regime

The non-dom regime was replaced by the Foreign Income and Gains (FIG) regime.

This regime is available to any individual (including those born in the UK) who become UK tax resident after ten consecutive years of non-residence.

For the first four years of UK tax residence, these individuals can claim relief from UK tax on foreign income and gains. After that period individuals (who may have previously had non-dom status) will be subject to UK tax on their worldwide income and gains.

Alongside the FIG regime, the UK also introduced a temporary repatriation facility. This allows non-doms (who had previously claimed the remittance basis) to remit foreign income and gains into the UK and pay a reduced rate of UK tax. This facility will run for three tax years from 2025/26.

Additionally, an individual who was a non-dom before 2025/26 and who claimed the remittance basis between 2017/18 and 2024/25, held their foreign assets on 5 April 2017 and sold those assets on or after 6 April 2025 will have those assets rebased to their 5 April 2017 market value. However, the individual may elect not to apply the rebasing if such rebasing is not advantageous to them.

Inheritance tax

Alongside the abolition of the non-dom regime for income and gains, the inheritance tax rules also adopted a new "long-term resident" test in place of the prior domicile test.

Since 6 April 2025, an individual will be within the scope of UK inheritance if they have been UK tax resident for at least ten of the previous 20 tax years.

Residence

Residence in the UK for tax purposes has therefore become the key test. The UK's residence rules no longer adopt a day count-only approach. An individual has to consider both a day count test and a ties test. These are set out in statute and have been in place since 6 April 2013.

The rules provide that you will be tax resident in the UK for a tax year if:

- you do not meet any of the automatic overseas tests; and
- you meet one of the automatic UK tests or the sufficient ties test.

The automatic overseas tests

If an individual meets any of the following tests they will automatically not be UK tax resident:

- they spend fewer than 16 days in the UK and were UK resident in one or more of the three preceding tax years;
- they spend fewer than 46 days in the UK and were not UK resident in any of the three preceding tax years; or
- they work, broadly, full-time overseas, with only limited visits to, and workdays in, the UK.

The automatic UK tests

If an individual does not meet any of the automatic overseas tests they will be automatically UK resident if they meet any of the following tests:

- they spend at least 183 days in the UK in the tax year;
- they have a home in the UK which is available for a period of 91 consecutive days or more (at least 30 of which must fall within the tax year), and that home is actually used for at least 30 days in the tax year and they either have no overseas home(s), or, if they do, they spend fewer than 30 days in any overseas home in the tax year; or
- they work full time in the UK for any 365-day period, part of which falls in the tax year (with no significant breaks).

The ties tests

If none of the automatic tests are met, an individual will be UK tax resident if they meet the sufficient ties tests. The greater the number of days spent in the UK, the fewer the ties required to be UK tax resident:

UK Ties Required if UK Tax Resident in One or More of the Prior Three Tax Years:

- 16 to 45 days spent in the UK – at least four ties;
- 46 to 90 days spent in the UK – at least three ties;
- 91 to 120 days spent in the UK – at least two ties; or
- over 120 days spent in the UK – at least one tie.

UK Ties Required if Not UK Tax Resident in Prior Three Tax Years:

- 46 to 90 days spent in the UK – the first four ties;
- 91 to 120 days spent in the UK – at least three ties; or

• over 120 days spent in the UK – at least two ties.

The five tie tests are, briefly:

1) a family tie – a spouse, civil partner or cohabiting partner or child (other than those in full-time education) are in the UK;

2) an accommodation tie – at least 91 days' availability of accommodation in the UK of which at least one night is spent in the UK;

3) a work tie – at least 40 days worked (for more than three hours per day) in the UK;

4) a 90-day tie – more than 90 days spent in the UK in the previous two tax years; and

5) a country tie – the UK is the country in which you are present at midnight for the greatest number of days in the relevant tax year (this tie only applies if you have been resident in the UK for one or more of the previous three tax years).

UK Withholding Tax

The UK imposes withholding tax on UK annual source interest at a rate of 20% (rising to 22% from 6 April 2027). Whether interest is UK source is a multifactorial test as set out in both HMRC guidance and case law. However, it is customary to treat interest payable by a UK guarantor or paid in respect of assets secured against UK real estate as UK-source interest. Generally speaking, in the case of UK guarantors, it is accepted that the interest would only be subject to UK withholding tax if the facility were to go into default and the guarantors were called upon to make interest payments (and in that scenario there are likely to be more significant concerns for the lender's return than any withholding tax implications).

The standard market approach in English law-governed facility agreements (irrespective of whether it is a net asset value (NAV) facility, leveraged financing, acquisition financing or any other form of financing) is for any day one withholding tax risk to be borne by the lender, with the borrower on risk, broadly, for change of law or for failing to secure any withholding tax exemption where the lender has complied with any procedural requirements. Conversely, the borrower takes risk on any change-of-law provisions.

It is therefore of paramount importance for lenders to ensure that they are entitled to a full exemption from withholding tax to avoid any tax leakage in the transaction. This is not typically a problem for domestic lenders due to exemptions for UK banks and entities which are subject to and which pay UK corporation tax. Similarly, given the UK's wide network of double tax treaties, which often reduce the withholding tax from 20% to 0%, identifying an exemption through the relevant double tax treaty is in most cases straightforward for overseas corporate lenders.

Given the cumbersome process of making an application for treaty relief, HMRC introduced the treaty passport scheme in 2010 with the intention of streamlining this process. Under this scheme, lenders, following an application, are granted a treaty passport enabling them to benefit from the treaty rate of withholding tax, valid for five years. The borrower is then required to submit an application to HMRC to make interest payments at the treaty rate. This is often straightforward but, as the borrower is legally required to withhold until receipt of a "gross payment direction" from HMRC, issues can arise where interest is payable shortly after completion given timing issues.

In response to this, HMRC has again helpfully provided guidance enabling the borrower to make interest payments at the relevant treaty rate from the date on which they receive acknowledgement from HMRC that the application has been received. Accordingly, it is accepted market practice that a borrower should pay the gross amount until receipt of this direction, although it is common for top-tier sponsors to push back on this and for a commercial discussion to ensue. In these cases, it is not uncommon for the parties to agree to defer interest payments until receipt of the direction.

Alternatively, lenders are showing increasing interest in the UK's qualifying private placement (QPP) exemption. This provides a day one exemption from withholding tax upon the provision of a creditor certificate from the lender which confirms that it is resident in a "qualifying territory", meaning a territory with

which the UK has a double tax treaty containing a non-discrimination article where the other conditions for the exemption are typically met in big-ticket third party financings. Notwithstanding the simplicity of the QPP exemption, application through the treaty passport scheme appears to be preferred by the majority of lenders and sponsors in terms of withholding tax exemption.

Syndication and other forms of risk sharing are a popular strategy for lenders, often to spread the risk of repayment and also to generate arranger and agent fees. In the case of syndication, the position is straightforward: beneficial entitlement to the interest will pass to the syndicate and that entity will be required to establish its own withholding tax position and bear the risk of any "day one" withholding.

More complex risk participation arrangements can create withholding tax complexities where, for example, the day-one lender remains the "lender of record" but it has parted with the beneficial title to the interest, for example, where it acts as a form of trustee for other "lenders". Again that "new lender" is required to demonstrate a withholding tax exemption in order for the full amount of the interest to be paid gross; if it cannot, then the portion of the interest corresponding to that new lender will require to be withheld.

This can be problematic where there is reluctance on the part of the day-one lender to disclose the risk participation/existence of the new lender to the borrower. There is HMRC guidance which can mitigate this position in the case where the day-one lender is a "treaty lender" and the beneficial owner of the interest is also resident in a jurisdiction which provides a full exemption for UK withholding tax. In this scenario, HMRC guidance confirms that the full amount of the interest can be paid gross to the day-one lender, notwithstanding it is a conduit, on the basis that its imposition does not alter the overall withholding tax position. This guidance does not, on the face of it, apply to a situation where the day-one lender is not a treaty lender (eg, a UK bank) irrespective of the double tax treaty position of the new lender.

Implications of the New Carried Interest Regime for Non-Residents

Since 6 April 2026, sums arising in respect of carried interest have been taxed as profits of a deemed trade where an individual performs, or has performed, investment management services in any tax year directly or indirectly in respect of a fund. Where the carried interest is "qualifying", a 72.5% multiplier will apply to the taxable amount, giving an effective top rate of approximately 34.1% for additional rate taxpayers (including Class 4 National Insurance Contributions or NICs). Non-qualifying carried interest will be taxed at rates of up to 47%.

While this represents a radical overhaul of the framework for taxation of carried interest, the impact in the headline rate of tax is somewhat more understated – carried interest which is neither within the scope of the disguised investment management fee rules, nor the income-based carried interest rules is currently taxed at 32%. For context, "qualifying carried interest" is, broadly, interest which satisfies the average holding period requirements, which replicate the timeframes set out in the income-based carried interest rules. Disguised investment management fees will continue to be charged at 47%.

One area of significant change is the taxation of non-UK residents. The effect of treating individuals carrying on a deemed trade is that non-UK residents will be subject to UK income tax to the extent that profits are attributable to UK-performed investment management services. This is calculated on the basis of "UK workdays" (any day in which three hours or more are spent in the UK performing investment management services) and apportioned on the basis of days spent working in the UK. This is in contrast to the current regime where non-resident carry holders are not taxed on capital gains funding carried interest if they are not UK tax resident when it arises.

In recognition of the potential for double taxation, the government has introduced statutory limitations on the territorial scope of the taxation of qualifying carried interest. The proposed limitations are as follows:

- any services performed in the UK before 30 October 2024 will be deemed to be non-UK services;

- any UK services performed in a tax year in which an individual is neither UK tax resident nor spends at least 60 days in the UK in the relevant tax year (a new UK workday threshold test) will be deemed to be non-UK services; and
- any UK services performed in a tax year will also be treated as if they were non-UK services if three full tax years (in addition to the then-current tax year) have passed, during which time the individual was neither UK resident nor met the UK workday threshold.

The consequence of this three-year tail is that non-residents realising qualifying carried interest in the 2029/2030 tax year will not be subject to UK tax provided that they:

- become non-UK tax resident and spend fewer than 60 UK workdays in the UK in the 2026/2027 UK tax year; and
- spend fewer than 60 UK workdays in the UK in the 2027/2028 and 2028/2029 UK tax years.

As alluded to above, the safe harbour only applies to "qualifying carry" and, to the extent the carry is non-qualifying and attributable to UK workdays, that carry is fully taxable in the United Kingdom. This is somewhat ameliorated by drafting which provides that, where it is unclear if carry is qualifying or non-qualifying carry, then provided that it is reasonable to assume that the profits would be qualifying on the first workday, a day that would otherwise be treated as a UK workday will instead be treated as a non-UK workday.

USA



Law and Practice

Contributed by:
Devon M. Bodoh, Joseph M. Pari and Blake D. Bitter
Weil, Gotshal & Manges LLP

Contents

1. Sources and Principles p.501
1.1 Domestic Sources of International Tax Law p.501
1.2 Hierarchy of Sources p.501
1.3 OECD Model/United Nations Influence on Treaty Practice p.501
1.4 Multilateral Instrument p.502

2. Territoriality, Residence and Permanent Establishment p.502
2.1 General Principle of Territorial Taxation p.502
2.2 Tax Residence of Individuals p.502
2.3 Taxation of Resident Individuals p.502
2.4 Taxation of Non-Resident Individuals p.503
2.5 Tax Residence of Legal Entities p.503
2.6 Definition of Permanent Establishment p.503

3. Taxation of Cross-Border Income p.504
3.1 Income From Immovable Property p.504
3.2 Business Profits p.504
3.3 Passive Income p.505
3.4 Capital Gains p.505
3.5 Employment Income p.505
3.6 Other Income p.506

4. OECD/G20 Global Tax Reform p.506
4.1 Pillar One – Amount B p.506
4.2 Pillar One – Amount A p.506
4.3 Pillar Two p.506
4.4 Specific Features or Deviations of Pillar Two p.507
4.5 Digital Services Tax p.507

5. Anti-Avoidance and Anti-Evasion Measures p.507
5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.507
5.2 Anti-Avoidance Mechanisms p.508
5.3 Blacklists and Non-Cooperative Jurisdictions p.508
5.4 Reporting Obligations and Disclosure Regimes p.508
5.5 Role of Tax Authorities and Enforcement Measures p.508

6. Penalties and Sanctions p.509
6.1 Tax Penalties p.509
6.2 Criminal Penalties p.509
6.3 Interaction Between Tax and Criminal Procedures p.509

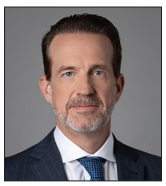
7. Administrative Co-Operation p.510
7.1 Legal Framework for Administrative Co-Operation p.510
7.2 Exchange of Information Clauses in Tax Agreements p.510
7.3 Other Forms of International Tax Collaboration p.510

8. Mutual Agreement Procedures and Arbitration p.510
8.1 Availability and Legal Basis p.510
8.2 Application Deadlines p.510
8.3 Mandatory Binding Arbitration p.510

9. Dispute Prevention p.510
9.1 Advance Pricing Agreements p.510
9.2 Other Mechanisms p.511

Weil, Gotshal & Manges LLP was founded in 1931 and has provided legal services to the largest public companies, private equity firms and financial institutions for more than 90 years. Widely recognised by those covering the legal profession, Weil's lawyers regularly advise clients globally on their most complex litigation, corporate, restructuring, and tax and benefits matters. Weil has been a pioneer in establishing a geographic footprint that has allowed the firm to partner with clients wherever they do business. Weil's global tax department offers comprehensive knowledge of how the complex and continually evolving nature of tax law plays a crucial role in some of the most significant and high-profile domestic and cross-border transactions, restructurings and other commercial matters. The firm not only understands the nature of its clients' transactions, but also understands their businesses, and is a critical part of the team that works to accomplish each client's business goals.

Authors



Devon M. Bodoh is a partner in Weil Gotshal & Manges LLP's tax department and is based in Miami and Washington, DC. Devon is the head of the firm's international and cross-border tax practice, a member of the tax department's leadership team and managing partner of the Miami office. He advises clients on cross-border mergers, acquisitions, spin-offs and other divisive strategies, restructurings, bankruptcy and non-bankruptcy workouts, the use of net operating losses, foreign tax credits, and other tax attributes and consolidated return matters. Devon is recognised as a leading lawyer by Chambers USA.



Blake D. Bitter is counsel in Weil, Gotshal & Manges LLP's tax department and is based in Washington, DC. He advises clients on tax aspects on a variety of US and cross-border transactions, including corporate acquisitions and mergers, spin-offs and other divisive strategies, restructurings, bankruptcy and non-bankruptcy workouts, and consolidated return matters.



Joseph M. Pari is co-chair of Weil, Gotshal & Manges LLP's tax department and is based in New York and Washington, DC. He has extensive experience in advising on federal income taxation of domestic and cross-border mergers, acquisitions, spin-offs, other divestiture types, restructurings, bankruptcy and non-bankruptcy workouts, acquisition financing and the use of pass-through entities in acquisitive and divisive transactions, with an emphasis on corporate tax planning, the utilisation of net operating losses, and other tax attributes and consolidated return matters. Joseph has been recognised as a leading lawyer by Chambers USA and Chambers Global.

Contributed by: Devon M. Bodoh, Joseph M. Pari and Blake D. Bitter, **Weil, Gotshal & Manges LLP**

Weil, Gotshal & Manges LLP

2001 M Street NW
Suite 600
Washington, DC 20036
USA

Tel: +1 202 682 7000
Web: www.weil.com



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The US constitution governs all sources of US law and the US Constitution, acts of congress (ie, US federal legislation) and treaties (negotiated by the executive branch and approved by the US senate) are the "supreme Law of the Land". Accordingly, the principal sources of US international tax law are the Internal Revenue Code of 1986, as amended (the "Code") and income tax treaties. The US Treasury Department (the "Treasury") and the Internal Revenue Service (the "IRS"), which is a government agency within the Treasury, also implement and interpret the Code and income tax treaties by issuing regulations ("Treasury Regulations") and other administrative guidance (eg, revenue rulings, notices, technical memorandums). The Treasury Regulations have broad application while other administrative guidance may only reflect the current position of the IRS with respect to the interpretation or application of the Code or Treasury Regulations.

In addition to the legislative and administrative sources of US tax law, case law from US federal courts is also a source of tax law as such courts interpret and apply the US Constitution, the Code and treaties. As the courts apply the US Constitution and interpret and apply other sources of US tax law, the courts and case law may override and invalidate legislation, Treasury Regulations, or other administrative guidance.

The US currently has 58 income tax treaties covering 66 jurisdictions. Three income tax treaties are currently awaiting US senate approval; specifically treaties with Hungary (replacing a terminated treaty), Poland (replacing a treaty in force) and Vietnam (entering into a treaty for the first time).

1.2 Hierarchy of Sources

The US Supreme Court has held that when US federal law or a treaty conflict with the US Constitution, the US Constitution prevails. US federal legislation (ie, the Code) and income tax treaties are on equal footing under the US Constitution and, accordingly, a later-in-time rule generally applies. Nevertheless, US courts first attempt to interpret the law to give effect to both the US federal law and a treaty. Although widely believed not to be required, some courts appear to require a clear and manifest legislative intent to override a treaty with US federal law.

1.3 OECD Model/United Nations Influence on Treaty Practice

US treaties do not generally follow the OECD Model Convention or the UN Model Double Taxation Convention. The US uses its own model treaty, the current iteration of which was issued in 2016 (the "2016 Model Treaty"). However, the 2016 Model Treaty was originally developed from the OECD Model Convention and generally parallels its purpose and structure. Similar to the OECD Model Convention, the 2016 Model Treaty's underlying policy is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance.

Despite the similarities between the 2016 Model Treaty and the OECD Model Convention, there are important differences. For example, a person other

than an individual that is a resident of both contracting states is treated as not being a resident of either contracting state for the purposes of claiming treaty benefits under the 2016 Model Treaty, but, under the OECD Model Convention, the competent authorities of the contracting states should endeavour to determine such person's residence by mutual agreement. Additionally, the 2016 Model Treaty (and most in-force US treaties) includes a limitation on benefits article to tackle treaty abuse, as opposed to the principal purpose test.

1.4 Multilateral Instrument

The US is not a signatory to the Multilateral Instrument (MLI).

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

The US does not have a territorial tax regime and generally taxes its tax residents on their global income. However, for tax years beginning on or after 1 January 2018, the US has shifted its international taxation to a "hybrid" system that exempts some foreign-source income (eg, foreign-source dividends received by certain US corporations), but that currently taxes, at reduced rates, a much broader scope of previously deferred foreign profits while curtailing certain types of base erosion payments (through anti-hybrid rules, limitation on interest deductibility, rules that re-characterise certain debt as equity, and a specific base erosion minimum tax for certain deductible payments to foreign affiliates).

2.2 Tax Residence of Individuals

The US treats both its citizens and resident alien individuals as tax residents of the USA. Resident alien individuals are generally:

- lawful permanent residents (ie, US green card holders) as long as they hold that status; and
- individuals that are present in the USA for 31 days in the current year and 183 days during the current year and the two preceding years (taking into account a third of the days present in the first year prior to the current year and a sixth of the days present in the second year prior to the current year).

2.3 Taxation of Resident Individuals

The US generally taxes individuals who are US tax residents on their worldwide income and such individuals are generally subject to income tax on such income on a net basis (ie, gross income minus certain deductions). The maximum income tax rate for individuals (including individuals invested in pass-through entities) that are US tax residents is 37%. Furthermore, certain US states and local governments levy income taxes on the same (or similar) income earned by such individuals. The rate of such additional taxes (if any) varies by state and the applicable local governments. Additionally, some US states and local governments may also levy an entity-level tax on a business entity notwithstanding its classification as a pass-through entity for US federal tax purposes.

Capital Gains

Gains from the disposition of capital assets held for more than one year (ie, long-term capital gains) are subject to preferential capital gains tax rates (generally 15% to 20% depending on income thresholds) and losses from the disposition of capital assets may offset capital gains and, if exceeding the amount of such gains, ordinary income up to USD3,000 per year. Any unused capital losses can generally be carried forward indefinitely. Gains from the sale of certain capital assets may also be subject to a 3.8% net investment income tax for residents whose annual income exceeds certain thresholds (generally USD200,000–250,000).

Dividends

Distributions by a corporation to individual shareholders are generally taxed as "dividends", to the extent that they are paid out of the corporation's current or accumulated earnings and profits ("E&P"). Dividends received from domestic and certain qualifying foreign corporations received by individual shareholders (referred to as "qualified dividends") may be taxed at a preferential tax rate (generally equivalent to long-term capital gains rates) or, if not qualified dividends, then at regular individual tax rates. If the corporation has no E&P (or if the distribution exceeds the corporation's E&P), the individual shareholder will be allowed

to treat the distribution (or the excess, in the latter case) as a return of capital, to the extent of the shareholder's basis in the stock. Any distribution in excess of basis will be treated as gain from the sale of stock (which is generally taxed as capital gain).

2.4 Taxation of Non-Resident Individuals

Dividends, Interest, Rents, Royalties, Etc

Non-US tax residents are generally taxed in the US on US-source dividends, interest, rents, royalties and other "fixed or determinable annual or periodic gains, profits and income" (collectively referred to as "FDAP"), that is, generally investment income associated with passive assets, as long as such income is not effectively connected with the conduct of a US trade or business or attributable to a permanent establishment. FDAP is subject to a 30% gross basis withholding tax if paid to a non-US tax resident, unless reduced by an applicable income tax treaty.

Capital Gains

Generally, capital gains from sales of stocks, bonds or other personal property by non-US residents are exempt from US taxation and withholding (because the residence of the seller generally determines whether such gain is foreign-sourced or US-sourced). Note that if a US office of the non-US tax resident plays a significant role in the acquisition or sale of such personal property, such activity can, in certain instances, cause what would be foreign-source income to be US-source income that may be subject to US income tax.

Sale of US Real Property

The sale of exchange of a US real property interest ("USRPI") by a non-resident individual is generally subject to tax under the Foreign Investment in Real Property Tax Act ("FIRPTA"). FIRPTA is enforced by a withholding regime that generally requires buyers to withhold 15% of the fair market value of the applicable USRPI from the purchase price. A USRPI includes an interest in the stock of a "US real property holding corporation" ("USRPHC"). A USRPHC is generally a US corporation that holds US real property whose fair market value is at least 50% of the fair market value of all its real property and assets used in its trade or business. Sellers of corporate stock may generally provide a certification by the corporation upon sale that the corporation is not a USRPHC and may thus avoid FIRPTA taxation and withholding. Publicly traded corporations are subject to certain exceptions from both the substantive tax and withholding requirements of FIRPTA.

2.5 Tax Residence of Legal Entities

The US generally determines tax residence of legal entities using a place-of-incorporation style rule. Under this rule, a legal entity that is created or organised in the US under the law of the US, any US state or the District of Columbia is generally treated as a US entity (ie, corporation, partnership, etc, as applicable).

2.6 Definition of Permanent Establishment

Under the Code, a non-US person (including an individual or entity) is generally subject to US federal income taxation to the extent that such person carries on a "trade or business" in the US. While the Code does not define what constitutes a US trade or business, the courts have generally found a US trade or business exists when a non-US person engages in activity in the US in pursuit of profit that is considerable, continuous, regular and substantial. Accordingly, the US trade or business definition can be interpreted rather broadly. However, certain activities are more specifically excluded from this definition under the Code, Treasury Regulations and case law. For example, trading in securities or commodities on a taxpayer's own behalf or through a broker is not generally considered a US trade or business. Additionally, an individual performing personal services on behalf of a non-US employer is generally not regarded as a US trade or business unless such services occur for more than 90 days during a year and the compensation for such services is more than USD3,000.

The definition of a permanent establishment under such treaties generally follows that in the OECD Model Convention (with some deviations where the US sticks to a more traditional version definition – eg, the US does not extend permanent establishment status to commissionaire relationships or to persons who merely negotiate, as opposed to conclude, contracts in the US). Under US income tax treaties, a permanent establishment generally includes a fixed place of business in the United States through which a foreign person carries on a business. However, a foreign person

is not generally treated as having a permanent establishment if its activities in the US are limited to certain activities that are generally preparatory or auxiliary in nature. A foreign person may have a US permanent establishment in respect of activities undertaken on its behalf by a dependent agent who has and habitually exercises an authority in the US to conclude binding contracts. A foreign person does not have a permanent establishment in the US merely because it carries on business in the US through a broker, general commission agent, or any other independent agent, provided that such person is acting in the ordinary course of their business as an independent agent.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

See **2.4 Taxation of Non-Resident Individuals**. Non-US tax residents, whether individuals or entities, are subject to tax under FIRPTA (ie, on a net basis on their gain) on the disposition of a USRPI (generally, most types of immovable property in the US). As described above, this FIRPTA taxation is enforced by a withholding regime that generally requires buyers to withhold 15% of the fair market value of the USRPI.

3.2 Business Profits

US federal income tax is imposed on "taxable income", which is calculated as "gross income" reduced by deductions allowed under the Code. The US employs a global definition of income based on the accretion concept, ie, gross income is defined as "income from whatever source derived". Thus, any accession to wealth (other than mere appreciation of asset value) constitutes gross income unless the Code expressly excludes it.

Cash and Accrual Methods of Accounting

Every taxpayer must calculate its taxable income on an annual basis, called a "tax year". The calendar year is the most common tax year, but other tax years can be selected (ie, fiscal year) in certain circumstances. Taxpayers must use a consistent tax accounting method, which is a set of rules for determining when to report income and expenses. These accounting methods are generally:

- the cash method (usually used by individuals and small businesses); and
- the accrual method.

Under the cash method, a taxpayer reports income in the tax year such income is actually received and deducts expenses in the tax year such expense is actually paid. Under the accrual method, the taxpayer reports income in the tax year it is earned (regardless of when payment is received) and deducts expenses incurred in the tax year (regardless of when payment is made).

Classification of an Entity for Tax Purposes

The classification of an entity under the "check-the-box regulations" is also essential in the taxation of business profits because such classification governs whether and how such entity is taxed for US federal income tax purposes. US and foreign business entities may be classified as corporations, partnerships or entities disregarded as separate from their owners. A business entity with two or more owners is classified either as a corporation or a partnership, and a business entity with only one owner is either classified as a corporation or is disregarded as an entity separate from its owner.

Per se corporations

An entity is classified as a "per se corporation" if it is (i) organised under a US federal statute or a US state statute that describes the entity as incorporated or as a corporation, body corporate or body politic; or (ii) a foreign entity in a form enumerated in the regulations or if it falls within certain other categories. If an entity does not meet any of these requirements, it is an "eligible entity" with respect to which, its classification is elective. Default classification rules determine initial classification, which can be changed by filing the appropriate forms with the IRS. By default, a "domestic eligible entity" is a partnership if it has two or more owners or is disregarded as an entity separate from its owner if it has a single owner; and a "foreign eligible entity" is a partnership if it has two or more owners and at least one has unlimited liability, an association (which is a per se corporation) if all owners have limited liability, or is disregarded as an entity separate from its owner if it has a single owner with limited liability.

Corporations

A corporation is generally subject to US federal income tax at a maximum 21% rate. In addition, US states and local governments may levy corporate income taxes on the same (or a similar) tax base, but such taxes are generally deductible from the federal income tax base (subject to certain limitations). Therefore, a corporation operating in the US could face a combined tax rate in excess of 21% and, on average, corporations pay a combined US federal, state and local corporate income tax rate of approximately 26%. The USA also applies a corporate minimum tax that generally imposes a 15% minimum tax on the financial statement income for US corporations (including consolidated groups of corporations, see **4.3 Pillar Two**) with financial statement income of more than USD1 billion for three taxable years (or USD100 million in the case of a US corporation that is part of a non-US multinational group that has combined financial statement income of more than USD1 billion).

Partnerships and disregarded entities

For business profits that are earned by partnerships and disregarded entities, such business profits pass through to the entity's owners and are taxed at the applicable tax rate of such owner (for individual tax rates, see **2.3 Taxation of Resident Individuals**).

Branches

To the extent a non-US resident operates a business in the US through a US branch (eg, through a disregarded LLC), they will be subject to a 30% branch profits tax (subject to reduction by treaty) on the "dividend equivalent amount", which generally consists of effectively connected earnings and profits for a taxable year, calculated as earnings and profits attributable to effectively connected income without diminution by any distributions made during such taxable year, and adjusted by any increase or decrease in the home office's US assets, net of US liabilities. The branch profits tax is designed to achieve parity between the taxation of US branches and US subsidiaries of foreign entities. The branch profits tax also applies to interest paid by a US branch to a non-US recipient that is not engaged in a US trade or business and to "branch excess interest" (determined by a formula provided in the Treasury Regulations).

3.3 Passive Income

See **2.3 Taxation of Resident Individuals** for taxation of the receipt of dividends by US-resident individuals (or pass-through entities owned by US resident individuals). For dividends received by US corporations, certain deductions (eg, partial or full dividend received deductions depending on ownership) may be available. Interest and royalties are generally taxed as ordinary income for US tax residents. See **2.4 Taxation of Non-Resident Individuals** for taxation of FDAP (whether received by non-US resident individuals or entities). As described above, US withholding on FDAP may be reduced, or in some cases eliminated, by an applicable income tax treaty.

3.4 Capital Gains

See **2.3 Taxation of Resident Individuals** and **2.4 Taxation of Non-Resident Individuals** for a discussion of the taxation of capital gains.

3.5 Employment Income

Employment income is generally taxed as ordinary income, although certain unvested equity interests received as compensation may be taxed at receipt (when they may have little or no value), causing future appreciation to be taxed at capital gains rates upon disposition of such equity interest.

Employers and employees are subject to federal payroll taxes from certain compensation paid to employees for services performed in the US. In addition, certain states may also impose state level income and unemployment taxes. For example, in 2025, employees and employers were each subject to a social security tax of 6.2% on the first USD176,100 of wages paid to an employee and a Medicare tax of 1.45% on the wages paid to an employee. Additionally, an employee must, via withholding by their employer, pay an additional Medicare tax of 0.9% on their wages in excess of USD200,000.

Generally, if a non-US resident performs services on behalf of a non-US employer while in the US and is (i) present in the US for 90 days or less in a taxable year; and (ii) the compensation for such services is less than USD3,000, then the US does not tax such income. See **2.6 Definition of Permanent Establishment**. To the extent a non-US resident does not qualify for this

exemption, such non-US resident may be treated as having income that is effectively connected with the US and subject to US tax generally at individual income tax rates applicable to US residents. To the extent such non-US person is not treated as having effectively connected income in the US but receives a salary for activities in the US, such income may be subject to 30% (subject to reduction under an applicable income tax treaty).

Remote working is not specifically addressed and the general rules regarding physical presence and activities carried on in the US generally apply. Remote work may therefore cause a non-US resident employee and/or non-US resident employer to have a taxable presence in the US. See **2.6 Definition of Permanent Establishment**.

3.6 Other Income

There are generally no other types of income that are subject to special taxation rules in the USA.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Amount B is not presently implemented in the USA. In December 2025, the US Treasury and IRS issued a notice (Notice 2025-4) announcing their intent to issue proposed regulations that would provide a new simplified and streamlined approach (SSA) for pricing certain controlled transactions (generally those described in Amount B of Pillar One) involving marketing and distribution activities. The Treasury and the IRS intended the proposed future regulation would implement the substance of Amount B in its entirety through the SSA. The notice provided that the future proposed regulations would generally apply the SSA at a taxpayer's election. Such election would be made on a transaction-by-transaction basis in each taxable year in which the taxpayer desired the SSA to apply. Generally, the future regulations would create an additional safe harbour (subject to certain exceptions) for the US transfer pricing rules based on the SSA. Taxpayers could rely on the notice (before the proposed regulations were published) for taxable years beginning on or after 1 January 2025.

However, on 20 January 2025, President Donald Trump issued an executive order (the "BEPS Executive Order") stating that the global tax deal with the OECD (the "Global Tax Deal") would have no force or effect in the US and that the Treasury would notify the OECD that any commitments made by the Biden administration with respect to the Global Tax Deal would have no force or effect in the absence of an act by congress. Accordingly, it is unclear to what extent such regulations may be forthcoming.

4.2 Pillar One – Amount A

The US has not taken action to implement Amount A of Pillar One, and based on President Trump's BEPS Executive Order (see **4.1 Pillar One – Amount B**), it is unlikely that any further actions on Pillar One will occur at present.

4.3 Pillar Two

The global minimum tax under Pillar Two has generally not been implemented in the USA. However, the USA has implemented a number of provisions based on the base erosion and profit shifting (BEPS) initiatives that are intended to address the same concerns as Pillar One and Pillar Two. For example, the US enacted the Tax Cuts and Jobs Act (TCJA) at the end of 2017, which generally attempts to neutralise the double non-taxation effects of:

- inbound dividends involving hybrid arrangements, by either denying a participation exemption or requiring domestic inclusion (depending on whether the hybrid dividend is received by a domestic corporation or a controlled foreign corporation); and
- outbound deductible interest or royalty payments that produce a deduction/no inclusion outcome owing to hybridity by disallowing such deduction.

The TCJA further expanded a limitation on the deductibility of interest expense (which, very generally, is limited to 30% of EBITDA) and enacted a base erosion and anti-abuse tax (BEAT), which targets base erosion by imposing additional tax on certain large US corporations that make deductible payments to foreign related parties. Such additional tax is designed as a 10% minimum tax (scheduled to increase to 12.5% in 2025) imposed on modified taxable income.

Furthermore, the US has enacted country-by-country reporting consistent with the BEPS recommendations and has the limitation on benefits article in most of its income tax treaties.

It should be noted that US also applies a corporate minimum tax (effective from 1 January 2023) that generally imposes a 15% minimum tax on the financial statement income for US corporations (including consolidated groups) with financial statement income of more than USD1 billion for three taxable years (or USD100 million in the case of a US corporation that is part of a non-US multinational group that has combined financial statement income of more than USD1 billion). The US also enacted (in the TCJA and further modified by the One Big Beautiful Bill Act) a minimum tax on the income of a US person's controlled foreign corporations (now called "net tested income", which is taxed immediately but at a reduced rate). However, the net tested income does not generally qualify under Pillar Two because it is not calculated on a jurisdiction-by-jurisdiction basis.

4.4 Specific Features or Deviations of Pillar Two

As described in **4.1 Pillar One – Amount B**, the BEPS Executive Order effectively pulled the US out of the Global Tax Deal. Following the BEPS Executive order, early drafts of the One Big Beautiful Bill Act included a provision (referred to as "Section 899") that required an increase in tax rates, removal of certain tax exemptions, and other retaliatory measures on countries (and such countries' residents) that have "extraterritorial" or "discriminatory" taxes. Section 899 was understood to target taxes such as Pillar Two's undertaxed profits rule, digital services taxes, and other similar taxes. This retaliatory provision was not included in the final One Big Beautiful Bill Act in response to the deal with the G7 to exempt US companies from certain aspects of Pillar Two. In response, the OECD recently issued a "Side-by-Side Package" following the USA's agreement with the G7 countries. This package includes a number of items, including a side-by-side regime that may effectively shield US-based multinational companies from the application of the global minimum tax rules (eg, the income inclusion rule and the undertaxed profits rule) beginning in 2026.

4.5 Digital Services Tax

The US does not impose a federal tax specific to digital services, and income from digital services is subject to tax under the general income tax rules. The US generally views the imposition of taxes specifically targeted at digital services by non-US jurisdictions as unfairly targeting US businesses and has threatened retaliatory tariffs against certain countries' imposed unilateral digital services taxes. Additionally, although not ultimately enacted, Section 899 would have identified digital services taxes as extraterritorial and discriminatory, thus imposing additional taxes on jurisdictions that have a digital services tax.

However, several US states and localities impose taxes that are specific to digital services.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax avoidance in the US is generally defined differently from tax evasion and tax fraud. More specifically, tax avoidance is generally an action taken to lessen tax liability that is generally legal (ie, allowed under the Code or Treasury Regulations). Tax evasion, however, is the failure to pay or a deliberate underpayment of taxes (which may include taking actions that are not allowed by the Code or Treasury Regulations), including wilful attempts:

- to evade or defeat any tax imposed by the Code;
- failure to file tax returns and pay any tax;
- failure to collect and remit taxes required to be collected by a person under the Code;
- making fraudulent tax returns or statements;
- issuing fraudulent withholding exemption certificates; and
- concealing property or destroying or falsifying records in connection with an agreement or compromise with the IRS.

The Code does include a general anti-avoidance rule that may disallow benefits under the Code if a transaction lacks "economic substance". Economic

substance generally requires a transaction to change a taxpayer's economic position in a meaningful way (other than the effect of federal income tax), where there are non-federal income tax purposes for engaging in the transaction. Individual Code provisions, Treasury Regulations, and case law also provide for other anti-abuse doctrines such as "substance-over-form", "step transaction", "business purpose" and "sham transaction" doctrines. All of these doctrines generally serve a similar purpose: to look beyond the form of a transaction and disallow otherwise applicable tax benefits if the transaction violates the spirit of the law.

Additionally, the IRS maintains and publishes a list of transactions that the IRS considers to be abusive ("listed transactions") and has identified a number of transactions that are subject to additional scrutiny ("reportable transactions"). Many of the arrangements identified as listed transactions include a cross-border aspect. Taxpayers that participate in listed transactions or reportable transactions (and material advisers of such taxpayers), must disclose such transactions to the IRS.

5.2 Anti-Avoidance Mechanisms

The US tax system primarily relies on voluntary compliance by taxpayers to file and pay their taxes. To the extent a US resident does not voluntarily comply, monetary and criminal penalties may apply (see **6.1 Tax Penalties** and **6.2 Criminal Penalties**). Tax filings (referred to as "information returns") are also required by taxpayers, employers, business entities and business partners for a variety of transactions. The IRS is the primary agency tasked with enforcing the Code, and it collects and reviews, and may audit, these information returns and other tax returns. To aid the IRS in identifying tax fraud and evasion, there are mandatory reporting requirements for listed transactions and reportable transactions (see **5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes** and **5.4 Reporting Obligations and Disclosure Regimes**). Additionally, the IRS also utilises a whistle-blower programme, whereby a person may report information about suspected tax fraud, evasion or tax law violation to the IRS. Such person may receive a whistle-blower award of 15–30% of the amount the IRS collects as a result of the information provided. The IRS also has a voluntary disclosure programme where taxpayers may contact and co-operate with the IRS to resolve tax matters (including unreported income, as long as it is not derived from illegal activities); such voluntary disclosure and payment of tax owed (generally, plus interest and penalties) may allow a taxpayer to avoid criminal penalties.

5.3 Blacklists and Non-Cooperative Jurisdictions

The US does not generally maintain a list of non-cooperative or high-risk jurisdictions for tax purposes. The Treasury, through its Office of Foreign Assets Control, does administer economic and trade sanctions based on US foreign policy and national security, but these are not generally based on the tax policy of the relevant jurisdictions. Companies or residents of certain jurisdictions (eg, China) may be limited in their ability to own entities that receive certain tax credits in the US (eg, certain clean energy tax credits).

However, to the extent Section 899 (or similar provision) is enacted, such a list may be kept (see **4.4 Specific Features or Deviations of Pillar Two**).

5.4 Reporting Obligations and Disclosure Regimes

The IRS maintains and publishes a list of transactions that it considers to be abusive (ie, listed transactions) and has identified a number of transactions that are subject to additional scrutiny (ie, reportable transactions). Taxpayers that participate in a listed transaction or a reportable transaction must disclose such transactions to the IRS. Additionally, material advisers (eg, generally persons providing assistance or advice with respect to these transactions), must also report such transactions to the IRS. Failure to make these disclosures may result in penalties (eg, up to USD100,000 for individuals and USD200,000 for non-individuals, for failure to disclose listed transactions).

5.5 Role of Tax Authorities and Enforcement Measures

The IRS generally has broad powers to gather information and records related to the taxpayer through information returns, tax returns, subpoenas (of taxpayers and of third parties, including banks) that may

be enforced by court order, and, if a warrant is signed by a judge, to execute searches within the scope of such warrant. Such searches may be conducted in co-ordination with other agencies of the US government.

The IRS generally must begin an audit or examination of a taxpayer within three to six years of the due date of the tax return for the tax year being audited (unless a taxpayer filed a late tax return or failed to file tax returns, including information returns, for such tax year). The IRS and Treasury also incentivise whistleblowers and the public to collect information that may lead to the investigation of tax fraud (see **5.2 Anti-Avoidance Mechanisms**). Additionally, IRS agents have access to a forensic laboratory and resources, to review and examine evidence that has been gathered.

6. Penalties and Sanctions

6.1 Tax Penalties

Under the Code, the IRS has the power to apply penalties for a variety of tax-related issues including:

- failure to file a tax return (including some information returns);
- failure to pay taxes or failure to timely pay taxes;
- accuracy-related issues (ie, where a taxpayer does not declare all their income, or claims deductions or credits that such taxpayer is not entitled to);
- underpayment of estimated taxes;
- failure to deposit certain taxes; and
- erroneous claims for refunds of an excessive amount.

The specific amount of the penalty (or penalty range) is generally specified in the Code. The penalty may be a set amount on a per-occurrence basis (eg, with respect to failure to file certain information returns) or a percentage of the amount of the unpaid or underreported taxes. Additionally, while not a penalty, if there is a failure to withhold on a payment subject to US withholding, a US withholding agent (generally a US resident payor) may be pursued by the IRS to pay the amount that should have been withheld, notwithstanding the ultimate tax liability being the liability of the payee.

The IRS generally charges interest on penalties as well as unpaid taxes. The IRS is the principal authority that enforces the payment of tax and may seize property, garnish wages and take other action to collect taxes, interest and penalties.

6.2 Criminal Penalties

In addition to the civil or monetary penalties that may be applied, the Code provides for criminal penalties, including criminal fines and/or imprisonment, for tax evasion and fraud. These include:

- wilful attempts to evade or defeat any tax imposed by the Code;
- failure to file tax returns and pay any tax;
- failure to collect and remit taxes required to be collected by a person under the Code;
- making fraudulent tax returns or statements;
- issuing fraudulent withholding exemption certificates; and
- concealing property or destroying or falsifying records in connection with an agreement or compromise with the IRS.

For example, if a person is convicted of wilfully attempting to evade or defeat any tax imposed by the Code, such person is guilty of a felony and is fined up to USD100,000 (USD500,000 in the case of a corporation) and/or may be imprisoned for up to five years.

6.3 Interaction Between Tax and Criminal Procedures

Criminal investigations can be initiated from information obtained from an IRS agent (eg, an auditor), revenue collection officer or whistle-blower, or if an investigative analysis detects possible fraud. Special agents at the IRS review the relevant information in a preliminary investigation and if a supervisor agrees, a criminal investigation is commenced. Once opened, the IRS special agents work with IRS criminal tax attorneys during the investigation. Following the analysis of information gathered, if a criminal prosecution is supported, a prosecution recommendation is sent from the IRS to the tax division of the US Department of Justice (in the case of tax investigations). If the Department of Justice accepts the investigation for prosecution, an IRS special agent will assist prosecutors in preparation for trial. However, once referred

to the Department of Justice for prosecution, the prosecutors manage any further investigation and the trial. The trial generally follows the typical judicial procedures (eg, jury versus bench trial, rules of evidence, etc) that apply to any federal criminal prosecution in the US.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

The US generally uses bilateral treaties, eg, income tax treaties and tax information exchange agreements, as the basis for administrative co-operation for tax matters.

7.2 Exchange of Information Clauses in Tax Agreements

The US does exchange information under its income tax treaties and tax information exchange agreements. Whether such information is exchanged automatically, spontaneously or upon request depends on the specific terms of an applicable treaty or agreement and may vary based on the specific type of information being exchanged.

7.3 Other Forms of International Tax Collaboration

The USA participates in the OECD's International Compliance Assurance Programme (ICAP). Accordingly, the procedures the US takes to handle any international transfer pricing disputes are generally consistent with those set forth in ICAP.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Mutual agreement procedure (MAP) arbitration is available under most US tax treaties. A taxpayer should consult the MAP article under the applicable US income tax treaty to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies under such treaty. US income tax treaties generally contain a provision which would oblige the US to make corresponding adjustments or grant access to the MAP with respect to economic double taxation that may otherwise result from a primary transfer pricing adjustment.

While US income tax treaties do not generally require the competent authorities to reach an agreement eliminating double taxation, such treaties do require that the competent authority makes a good faith effort to reach such an agreement. Accordingly, while there is no guarantee that competent authority assistance will result in the elimination of double taxation, a significant majority of cases conclude with such an agreement.

8.2 Application Deadlines

Relevant deadlines for submitting a MAP request depend on the relevant income tax treaty under which a MAP request is filed. Some treaties provide a specific timeframe, while others do not (in which case, domestic filing timelines may govern). Accordingly, taxpayers should consult the relevant tax treaty and should generally submit such a request as soon as possible once the taxpayer becomes aware that MAP assistance is required.

8.3 Mandatory Binding Arbitration

While not generally available, the US is supportive of mandatory binding arbitration to strengthen MAP programmes. The 2016 Model Treaty and some active US income tax treaties (eg, with Belgium, Canada, France, Germany, Japan, Spain and Switzerland) include a provision for mandatory binding arbitration.

9. Dispute Prevention

9.1 Advance Pricing Agreements

The US established an advance pricing agreement programme in 1991 (currently referred to as the Advance Pricing and Mutual Agreement or the "APMA" programme). Unilateral, bilateral and multilateral advance pricing agreements may be obtained through the APMA programme. The APMA programme also allows taxpayers to enter into an agreement with the IRS regarding transfer pricing methodology. The APMA programme is designed to promote certainty between taxpayers and the IRS and to save resources by preventing potential disputes. In addition, when

a taxpayer and the IRS enter into an APMA, the US competent authority will, upon a request by the taxpayer, attempt to negotiate a bilateral advance pricing agreement with the competent authority of the treaty country that would be affected by the transfer pricing methodology. The IRS has encouraged taxpayers to seek such bilateral advance pricing agreements through the US competent authority.

9.2 Other Mechanisms

Large corporate taxpayers can participate in the Compliance Assurance Process, which offers real-time issue resolution between taxpayers and the IRS prior to filing a tax return. Other co-operative compliance programmes include: the Pre-Filing Agreements Programme(for resolving issues with the IRS prior to filing a tax return), the Industry Issue Resolution Programme (under which the IRS issues guidance resolving frequently disputed issues) and various other dispute resolution and settlement programmes exist. Additionally, taxpayers may seek taxpayer-specific guidance regarding transactions through a private letter ruling request programme at the IRS.

Trends and Developments

Contributed by:
Devon M. Bodoh, Joseph M. Pari and Blake D. Bitter
Weil, Gotshal & Manges LLP

Weil, Gotshal & Manges LLP was founded in 1931 and has provided legal services to the largest public companies, private equity firms and financial institutions for more than 90 years. Widely recognised by those covering the legal profession, Weil's lawyers regularly advise clients globally on their most complex litigation, corporate, restructuring, and tax and benefits matters. Weil has been a pioneer in establishing a geographic footprint that has allowed the firm to partner with clients wherever they do business. Weil's global tax department offers comprehensive knowledge of how the complex and continually evolving nature of tax law plays a crucial role in some of the most significant and high-profile domestic and cross-border transactions, restructurings and other commercial matters. The firm not only understands the nature of its clients' transactions, but also understands their businesses, and is a critical part of the team that works to accomplish each client's business goals.

Authors



Devon M. Bodoh is a partner in Weil Gotshal & Manges LLP's tax department and is based in Miami and Washington, DC. Devon is the head of the firm's international and cross-border tax practice, a member of the tax department's leadership team and managing partner of the Miami office. He advises clients on cross-border mergers, acquisitions, spin-offs and other divisive strategies, restructurings, bankruptcy and non-bankruptcy workouts, the use of net operating losses, foreign tax credits, and other tax attributes and consolidated return matters. Devon is recognised as a leading lawyer by Chambers USA.



Blake D. Bitter is counsel in Weil, Gotshal & Manges LLP's tax department and is based in Washington, DC. He advises clients on tax aspects on a variety of US and cross-border transactions, including corporate acquisitions and mergers, spin-offs and other divisive strategies, restructurings, bankruptcy and non-bankruptcy workouts, and consolidated return matters.



Joseph M. Pari is co-chair of Weil, Gotshal & Manges LLP's tax department and is based in New York and Washington, DC. He has extensive experience in advising on federal income taxation of domestic and cross-border mergers, acquisitions, spin-offs, other divestiture types, restructurings, bankruptcy and non-bankruptcy workouts, acquisition financing and the use of pass-through entities in acquisitive and divisive transactions, with an emphasis on corporate tax planning, the utilisation of net operating losses, and other tax attributes and consolidated return matters. Joseph has been recognised as a leading lawyer by Chambers USA and Chambers Global.

Contributed by: Devon M. Bodoh, Joseph M. Pari and Blake D. Bitter, **Weil, Gotshal & Manges LLP**

Weil, Gotshal & Manges LLP

2001 M Street NW
Suite 600
Washington, DC 20036
USA

Tel: +1 202 682 7000
Web: www.weil.com



The two most significant recent developments in US international tax relate to the USA's withdrawal from the OECD's "Global Tax Deal" and the OECD's subsequent issuance of its "Side-by-Side Package"; and the passage of President Trump's The One, Big, Beautiful Bill Act ("OBBBA").

The Global Tax Deal and Side-by-Side Package

Withdrawal from the Global Tax Deal

On 20 January 2025, as one of his first acts as president in his second term, President Donald Trump issued an executive order (the "BEPS Executive Order") stating that the OECD's planned Global Tax Deal with the US would (i) limit the ability of the US to enact tax policies that serve the interests of US businesses and workers; and (ii) cause, along with other discriminatory foreign tax practices, US companies to face retaliatory international tax regimes if the US did not comply with foreign tax policy objectives. Accordingly, the BEPS Executive Order stated that the Global Tax Deal had no further force or effect in the US and it directed the secretary of the treasury to notify the OECD that any commitments made by the Biden administration with respect to the Global Tax Deal would have no force or effect in the absence of an act by the US Congress. The BEPS Executive Order further directed the secretary of the treasury to investigate whether there were any countries with tax rules that were extraterritorial or that would disproportionately affect American companies, and to develop a list of options for protective measures or other actions that the United States should adopt in response to such tax rules.

The Revenge Tax – Proposed (and Withdrawn) Section 899

Early drafts of the OBBBA included a provision (referred to as "Section 899") that targeted certain foreign countries (and such countries' residents) for retaliatory US tax measures. Such countries were defined as countries that had "extraterritorial" or "discriminatory" taxes that applied to US persons or foreign corporations owned by US persons. Such "extraterritorial" or "discriminatory" taxes generally would have included Pillar Two's undertaxed profits rule, digital services taxes, or diverted profits taxes. If a foreign country imposed any such taxes on US persons or foreign corporations owned by US persons, then Section 899 would apply retaliatory measures on such countries and their residents, including a required increase in tax rates, removal of certain tax exemptions, and other measures. For example, iterations of Section 899 generally would have:

- increased tax rates incrementally by 5 percentage points in each taxable year until reaching a cap of 15 or 20 percentage points;
- removed the exemption from US tax that typically applies to foreign governments (including sovereign wealth funds and pension plans); and
- modified and expanded the application of the base erosion and anti-abuse tax (BEAT) to certain non-publicly traded US corporations that are majority-owned by residents of a country with an "extraterritorial" or "discriminatory" tax.

Section 899 was ultimately not included in the final OBBBA thanks to a deal between the G7 countries

and the USA that, because of the existing US tax provisions targeting base erosion and profit shifting and the need to provide greater stability and certainty in the international tax system moving forward, a side-by-side system would be implemented that would generally exclude US-parented multinational groups from key aspects of Pillar Two (eg, the undertaxed profits rule and the income inclusion rule).

OECD Side-by-Side Package

On 5 January 2026, the OECD announced the Side-by-Side Package following the USA's agreement with the G7 countries. While the Side-by-Side Package includes some additional items, such as a simplified effective tax rate safe harbour, an extension of the transitional country-by-country reporting safe harbour, and a substance-based tax incentive safe harbour, the package's "Side-by-Side Safe Harbor" is particularly impactful because it may effectively shield US-parented multinational groups from the application of the global minimum tax rules, specifically the income inclusion rule and the undertaxed profits rule.

Under the Side-by-Side Safe Harbor, a multinational group may elect to have zero top-up tax for income inclusion rule and undertaxed profits rule purposes for a fiscal year if the group's ultimate parent entity (UPE) is located in a jurisdiction with a qualified side-by-side regime ("Qualified SbS").

A jurisdiction will be treated as having a Qualified SbS if it operates both an eligible domestic tax system and an eligible worldwide tax system. To qualify, the jurisdiction must effectively achieve a minimum level of taxation at both the domestic and international levels (including controlled foreign corporation and branch rules), provide foreign tax credits for qualified domestic minimum top-up taxes (QDMTTs) on the same terms as other covered taxes, and satisfy specified enactment timing and review requirements.

Jurisdictions recognised by the inclusive framework as having a Qualified SbS are listed on the OECD central record. If a multinational group's UPE is located in such a jurisdiction and the group elects the Side-by-Side Safe Harbor, then this safe harbour applies to all of that multinational group's controlled domestic and foreign operations. Notably, the Side-by-Side Safe Harbor does not switch off QDMTTs and does not deem top-up tax to be zero for purposes of computing domestic minimum taxes.

The Side-by-Side Safe Harbor applies to fiscal years beginning on or after 1 January 2026. While styled generically, the Side-by-Side Safe Harbor was clearly targeted as applying to the US (which is the only country listed on the OECD's central record as having a Qualified SbS). This action appears intended to preserve some co-operation regarding the Global Tax Deal, and prevent the Trump administration's potential implementation of Section 899 or a similar provision.

However, the issuance of the Side-by-Side Package does not block the potential for US retaliatory taxes in connection with the enactment of "extraterritorial" or "discriminatory" (eg, Pillar Two and digital services) taxes. As with other OECD packages, the Side-by-Side Package requires implementation by individual countries (in particular, countries that have already adopted "extraterritorial" or "discriminatory" taxes). This takes time (at the very least, to draft and enact legislation) and there is no guarantee that most or all of the relevant countries will agree to adopt the Side-by-Side Safe Harbor. If there are deviations from the Side-by-Side Safe Harbor that are not favourable to the US in such country-by-country implementation, that could further impact whether the US contemplates enacting Section 899 or a similar provision. Additionally, the Side-By-Side Package is not ideal in all respects from a US perspective, including that there is a stock-take in 2029 that may further impact the longevity of the Side-by-Side Safe Harbor. The US Congress also frequently considers tax changes, and the current US system could be modified in such a way that it no longer complies as a Qualified SbS.

Accordingly, it is still unclear how the US may react long-term to the Global Tax Deal and whether the US may still contemplate the implementation of retaliatory US taxes like Section 899.

OBBBA

On 3 July 2025, the US Congress passed the OBBBA and President Trump signed it into law on 4 July 2025. The OBBBA is sweeping tax and spending legislation that, from a US tax perspective, extends a number of

expiring provisions from the 2017 Tax Cuts and Jobs Act (TCJA) and introduces or amends a number of individual tax provisions, international tax provisions, state and local tax deductions, and energy transition tax credits. These changes reiterate that the tax structure in the USA is in flux and remains at the forefront of US political and economic consciousness. Various key international tax changes are highlighted below.

Modification of CFC pro rata share rules and removal of CFC one-month deferral election

Prior law allowed US shareholders of 10% or more of the stock of a controlled foreign corporation (CFC) to defer income under the Subpart F regime (ie, the anti-deferral regime applicable to passive income and easily movable income of a CFC) by only requiring such shareholders to include Subpart F income if they held stock in a CFC on the last day of the CFC's taxable year. Thus, midyear ownership changes generally resulted in tax deferral to a selling US shareholder. The OBBBA requires a US shareholder to pick up its pro rata share of Subpart F income if it owned CFC stock on any day of the CFC's tax year.

Prior law included an election that allowed deferral by granting a CFC the right to elect a taxable year ending one month earlier than that of its majority US shareholders (ie, US shareholders who own 50% or more of a CFC by vote or value). This allowed, particularly in the context of the TCJA's changes to the US approach to international tax, a significant potential deferral of tax on the income of such CFC. The OBBBA removes this election.

Downward attribution fix

The TCJA repealed a rule (former Section 958 (b)(4) of the Internal Revenue Code) preventing downward attribution of stock owned by a foreign person to a US person. The TCJA removed this rule in an attempt to limit certain transactions meant to de-control CFCs (ie, which would remove their status as CFCs). This attempt to preclude de-controlling transactions had significant unintended consequences. For example, if a foreign-parented group of corporations also included a subsidiary that was a US corporation, then the removal of this rule caused such US corporation's brother/sister foreign corporations to be treated as CFCs. Such proliferation of CFC status causes unnecessary taxation (and administrative costs and risk) for CFCs unrelated to such CFCs' own US shareholders within a foreign-parented group.

The OBBBA restores former Section 958 (b)(4) so foreign groups are now less likely to have unintended US CFC status and Subpart F taxation.

The OBBBA also adds a new Section 951B which captures and imposes the CFC rules on certain foreign-controlled US shareholders and certain related foreign corporations (referred to as foreign-controlled foreign corporations or F-CFCs), which is intended to prevent the transactions that the original repeal of Section 958 (b)(4) was attempting to address.

CFC look-through rule

In a welcome removal of uncertainty, the OBBBA makes a rule in Section 954 (c)(6) permanent that exempts payments of dividends, interest, rentals, and royalties between CFCs from immediate taxation under the Subpart F regime.

Global intangible low-tax income (GILTI) changed to net CFC tested income (NCTI)

Introduced in the TCJA, GILTI is a US tax regime that was designed to discourage US multinational groups from shifting profits to low or no-tax jurisdictions. While maintaining the principal framework of this regime, the OBBBA makes some significant changes. More specifically, the OBBBA:

- has renamed the regime to net CFC tested income (NCTI) and reduces it to a permanent 40% deduction (down from the prior 50% rate), thus yielding a 12.6% effective tax rate (before taking into account foreign tax credits (FTCs) and limitations on FTCs;
- increases allowable indirect FTCs to 90% (up from 80%);
- limits the expenses allocable to the NCTI calculation (eg, no longer apportioning interest expense and certain research and experimental costs), generally resulting in more FTCs being usable to reduce NCTI liability;
- removes an exclusion from the GILTI calculation for a deemed return on a CFC's tangible assets – resulting in an increase of taxable NCTI for taxpayers that own CFCs with material fixed assets; and

• applies to tax years beginning in 2026.

FDII changed to FDDEI

The foreign-derived intangible income (FDII) deduction was a TCJA tax incentive designed to encourage US multinationals to produce foreign income from the sale of goods or services tied to US intangibles. The OBBBA:

- renamed this deduction foreign-derived deduction-eligible income (FDDEI) and reduced the deduction from 37.5% to 33.34% (although the deduction was set to be reduced further under the TCJA for tax years beginning after 31 December 2025);
- eliminates a reduction of the deduction eligible income for a deemed return on tangible assets – resulting in an increase in the income eligible to be reduced by the deduction; and
- limits the expenses allocable to the FDDEI calculation (eg, no longer apportioning interest expense and certain research and experimental costs) – resulting in an increase in the amount of income eligible for reduction by the deduction.

Base Erosion Anti-Abuse Tax is increased to 10.5%

The Base Erosion Anti-Abuse Tax (BEAT) is a provision from the TCJA that imposes an additional tax to the extent that an applicable taxpayer's modified taxable income (MTI) exceeds 10% of its regular tax liability (reduced by certain tax credits). The 10% threshold by which a taxpayer's MTI is measured was set to increase to 12.5% beginning in 2026. The OBBBA has now set the BEAT rate permanently to 10.5% — a net positive for BEAT payers, who avoid the 12.5% scheduled increase.

USA – NEW YORK



Trends and Developments

Contributed by:
Matthew Rappaport, Matthew Foreman, Michelle Kabel and Elysse Anderson
Falcon Rappaport & Berkman LLP

Falcon Rappaport & Berkman LLP (FRB) is a full-service business law firm proudly advising clients seeking solutions to their most complex matters. FRB differentiates itself by combining a depth and variety of skills unmatched by typical advisors with a firm-wide commitment to excellent service. The firm partners with clients, offering access to thought leaders across numerous areas of professional practice to help them develop and achieve their legal, business, and personal objectives.

Authors



Matthew Rappaport chairs taxation and private client groups and serves as the firm's vice-managing partner. He concentrates his practice in taxation as it relates to real estate, closely held businesses, private equity funds, family offices and trust and estates. He advises clients regarding tax planning, structuring, and compliance for commercial real estate projects, all stages of the business life cycle, generational wealth transfer, family business succession, and executive compensation. Matthew is known for his work on complex deals involving advanced tax considerations. He has served as a trusted advisor for prominent real estate funds, executives of multinational corporations, venture capitalists, successful start-up businesses, ultra high net worth families.



Matthew Foreman co-chairs Falcon Rappaport & Berkman's taxation practice group and provides counsel on a broad array of transactional tax matters in various contexts, including taxable and tax-free combinations, mergers, sales, acquisitions, and divisive reorganisations. He also has significant experience with divisive reorganizations for partnerships focused on dividing large real estate portfolios, and with corporate Type D reorganisations and spin-offs. Matt started his career at Big 4 accounting firms where he advised Fortune 500 companies on a variety of tax matters. He is active in the New York City Bar Association, where he is a member (and former secretary) of the State and Local Tax Committee, as well as a member of the Emerging Companies and Venture Capital Committee.



Michelle Kabel is an associate attorney in Falcon Rappaport & Berkman's taxation, private client, and digital assets groups. Her tax planning practice focuses on taxation as it relates to Section 1031 and 1033 exchanges, Qualified Opportunity Zone investments, digital assets, corporate and partnership reorganisations, wealth transfer among families, and private equity fund formation. Her tax controversy practice includes representing clients before the Internal Revenue Service, the New York State Department of Taxation and Finance, and the New York City Department of Finance; matters include disputes related to income, franchise, and real property transfer taxes. She received her Juris Doctor magna cum laude from Quinnipiac University School of Law. She is an active member of the State and Local Tax Committee of the New York City Bar Association.



Elysse Anderson is an associate in Falcon Rappaport & Berkman's (FRB) corporate and securities practice group. Elysse concentrates her practice on a broad range of corporate and transactional matters, including corporate governance, business formation and structuring, and general corporate advisory work. She joined FRB as an intern during the summer of 2023 until the spring of 2025, working closely with attorneys in the corporate and securities

practice group. Post-graduation, Elysse continues to work with the corporate and securities team, while also assisting the real estate and taxation practice groups.

Falcon Rappaport & Berkman LLP

1185 Avenue of the Americas, Suite 1415
New York
NY 10036
USA

Tel: +212 203 3255
Email: mer@frblaw.com
Web: www.frblaw.com

Using F Reorganisations to Restructure Businesses Prior to a Sale

Introduction

M&A transactions involving the acquisition of an S corporation requires strategic pre-transaction structuring to ensure tax-efficiency. Often, this involves a reorganisation under Section 368 (a)(1)(F) (an "F Reorganisation") of the Internal Revenue Code of 1986, as amended (the "Code"). An F Reorganisation, when executed correctly, changes a company's legal structure (for example, from a corporation taxed as an S corporation to a limited liability company (LLC), thereby enabling a buyer to obtain a stepped-up basis) in a tax-free manner and with little to no disruption to business activities. This article provides an overview of what an F Reorganisation is, the steps to implement an F Reorganisation, and explains why or when an F Reorganisation may be necessary.

In an M&A landscape, the F Reorganisation is a vital restructuring tool. For example, buyers typically prefer to acquire assets (through an asset purchase agreement), for the resulting step-up in tax basis which generates increased depreciation and amortisation deductions in future years. Sellers, on the other hand, generally prefer a stock sale to avoid the complexity of transferring individual assets and benefit from capital gains treatment on the entire purchase price. An F Reorganisation resolves this tension by allowing the transaction to be structured as an equity purchase for legal purposes (preserving operational continuity, employer identification numbers, contracts, licenses, and employee relationships) while simultaneously being treated as an asset acquisition for US federal income tax purposes.

In the cross-border context, it may be necessary to reorganise a business to ensure a stepped-up basis upon acquisition or to optimise its structure for tax purposes. As such, a single-entity, tax-free reorganisation, such as an F Reorganisation, is a useful tool in any M&A or tax practitioner's toolkit. Understanding how and when to use F Reorganisations is imperative when advising clients, particularly after the introduction of Global Intangible Low-Taxed Income (GILTI) and Foreign-Derived Intangible Income (FDII) in 2018.

What is an F Reorganisation?

An F Reorganisation is a type of corporate restructuring governed by Section 368 (a)(1)(F) of the Internal Revenue Code (the "Code"). To qualify as a reorganisation under Section 368 (a)(1)(F) of the Code, a transaction must result in a mere change in identity, form, or place of organisation of one corporation, however effected. A "mere change" can involve an actual or deemed transfer of property from one corporation to another but is only considered a "mere change" (and, therefore, a qualifying F Reorganisation) if the following six specific requirements are met.

- Requirement 1: resulting corporation stock is distributed in exchange for transferor corporation stock.
- Requirement 2: identity of stock ownership.
- Requirement 3: resulting corporation must not hold any prior assets or tax attributes.
- Requirement 4: transferor corporation must completely liquidated for federal income tax purposes.
- Requirement 5: resulting corporation is the only acquiring corporation.
- Requirement 6: transferor corporation is the only acquired corporation.

The first requirement ensures that the resulting corporation's stock is issued solely in respect to the transferor corporation's stock, creating a direct exchange relationship between the old and new entities. In practical terms, this means that the shareholders of the original corporation must receive stock in the resulting corporation in exchange for their shares in the transferor corporation.

The second requirement mandates that the same person or persons must own all of the stock of the transferor corporation immediately before the reorganisation and all of the stock of the resulting corporation immediately after the reorganisation, in identical proportions. This requirement is not violated if the stock is of different classes or has different terms, provided it is of equivalent value, nor is it violated if either corporation distributes cash or other property.

The third requirement provides that the resulting corporation must not hold any property or have any tax attributes immediately before the transfer, subject to a narrow de minimis exception. The exception permits the resulting corporation to hold assets to facilitate its organisation, maintain its legal existence, or to hold proceeds of loans taken in connection with the F Reorganisation.

The fourth requirement states that the transferor corporation must completely liquidate for federal income tax purposes as part of the transaction, although a dissolution of the transferor's legal existence for state law purposes is not absolutely required; the transferor may even retain a de minimis amount of assets for the purpose of preserving its legal existence (as discussed above).

The fifth and sixth requirements, which were added to the final regulations in 2015, further ensure that the resulting corporation is the functional equivalent of the transferor corporation. Specifically, the fifth requirement provides that immediately after the reorganisation, no corporation other than the resulting corporation may hold any property previously held by the transferor if the other corporation would, as a result, succeed to any tax attributes of the transferor under Section 381 (c) of the Code. The sixth requirement provides that immediately after the reorganisation, the resulting corporation may not hold property acquired from a corporation other than the transferor if, as a result, the resulting corporation would inherit tax attributes of the other corporation under Section 381 (c) of the Code.

Taken together, these requirements reinforce the statutory concept that an F Reorganisation involves a single operating entity undergoing a mere change in identity, form, or place of organisation.

Implementation of an F Reorganisation

Revenue Ruling 2008-18 is the foundational guidance from the Internal Revenue Service (IRS) on F Reorganisations. It provides practitioners with a roadmap on how to effectuate an F Reorganisation while navigating complexities and maintaining compliance with the relevant rules and regulations.

In accordance with Revenue Ruling 2008-18, the shareholder(s) of the target S corporation (the "Target") will execute the following steps to effectuate an F Reorganisation:

- form a new corporation (the "Target Holding") and apply for an Employer Identification Number (EIN), which will be used to file tax election forms and returns.
- contribute the shares of Target to Target Holding in exchange for all of Target Holding's shares; and
- Target files IRS Form 8869, Qualified Subchapter S Subsidiary Election, to elect to be a qualified Subchapter S subsidiary (QSub), which effects a deemed tax-free liquidation of Target into Tar-

get Holding (and extends S corporation status to Target Holding, as per Rev. Ruls. 2008-18 and 64-250).

Tax elections

Three primary tax forms are associated with the F Reorganisation, each filed at a specific stage of the transaction.

First, Target Holding will make a protective S election by filing IRS Form 2553. While making an S election for Target Holding is not technically required, it may prove administratively useful. Under Section 1.381 (b)-1 (a)(2), in the case of a qualified F Reorganisation and without regard to whether such reorganisation also qualifies under any other provision of Section 368 (a)(1), Target Holding is treated as Target would have been treated if there had been no reorganisation. Accordingly, a reorganisation under Section 368 (a)(1)(F) does not terminate the S election, which remains in effect for Target Holding. Nevertheless, a protective election may simplify administrative matters, particularly in states that request copies of IRS confirmation of S election status.

Second, after the contribution of Target to Target Holding, Target Holding must file IRS Form 8869 to elect QSub status for Target. This election serves to extend S corporation status to Target Holding. Line 14 of Form 8869 should be marked "Yes" if the election is being made pursuant to a reorganisation under Section 368 (a)(1)(F) and Revenue Ruling 2008-18. Once the QSub election is effective, Target is treated as a disregarded entity for federal income tax purposes.

Third, after Target undergoes a state law conversion or merger to become an LLC, Target Holding will file IRS Form 8832 to ensure Target is treated as a disregarded entity for tax purposes. This filing is not required when Target is already an LLC; however, a protective election could be useful as a method to update the IRS regarding the entity type and name change associated with the EIN.

Conversion of Target through state law conversion or merger

If Target is not already an LLC, it will become an LLC by way of conversion or merger. Some states have conversion statutes, meaning Target can convert into an LLC by filing a form with the requisite state agency. For states that do not have conversion statutes, Target will become an LLC by way of a merger between Target and a newly formed LLC. The merger requires the preparation of certain merger documents, such as a plan of merger and certificate of merger. Both merger documents will be filed with the requisite state agency, similar to jurisdictions with a conversion statute.

Reasons to undertake an F Reorganisation

The most common reason to undertake an F Reorganisation is when the target is an S corporation and the parties need to disregard the target entity without adverse tax consequences to facilitate a partial rollover transaction while obtaining a step-up in basis on the assets sold. Under Section 311 (b), when a corporation makes a distribution of its property, the corporation is required to recognise a gain as if it sold the appreciated property for fair market value; this includes tangible and intangible assets where the basis is likely zero, and therefore the entire amount constitutes a recognised gain. Notably, this treatment is one-sided, meaning that only gain is recognised, and no loss may be claimed. The objective of an F Reorganisation is to preserve pass-through treatment while avoiding termination of the S election, which would result in taxation as a C corporation.

Another significant reason to pursue an F Reorganisation is to grant equity to key employees or personnel in the form of a profits interest. S corporations cannot have multiple classes of stock, and all distributions must be made on a pro rata basis. Consequently, practitioners who wish to offer profits interests or other classes of equity must form a partnership structure, which the F Reorganisation facilitates by converting the target into a disregarded entity held by a new holding company.

Conclusion

The F Reorganisation under the Code is one of the most versatile and effective pre-transaction structuring tools available in M&A practice, particularly when the target entity is an S corporation. As this article has demonstrated, the F Reorganisation uniquely bridges the divergent tax preferences of buyers and sellers, enabling an equity acquisition for legal purposes while

simultaneously achieving asset-acquisition treatment for federal and state income tax purposes.

The regulatory framework governing F Reorganisations provides practitioners with a well-defined roadmap for structuring these transactions. The implementation steps, while mechanical in nature, demand precision. The formation of a new holding corporation, the contribution of target stock, the QSub election on Form 8869, and, where applicable, the conversion of the target to an LLC must be carefully sequenced and timely executed.

Ultimately, the F Reorganisation exemplifies of how careful tax planning can align the economic interests of all parties to a transaction. Its proper execution, however, requires the co-ordinated efforts of experienced tax and corporate counsel to navigate the technical requirements and ensure that the intended tax benefits are fully realised.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Luke.Wilson@Chambers.com